Senate Committee on Environment and Public Works
Hearing entitled, *"Oversight of the Environmental Protection Agency"*
May 20, 2020
Questions for the Record for Administrator Andrew Wheeler

Chairman Barrasso:

1. When defending its decisions to grant hardship relief to three small refineries in *Renewable Fuels Association et al. v. EPA et al.*, No. 18-9533 (10th Cir. Jan. 24, 2020), EPA did not challenge petitioners' standing claims. I find that very troubling given that a federal bankruptcy court had previously ruled that a similarly situated biofuels lobby did not have standing to challenge EPA's decision to forgo retiring 426 million RINs for a large refinery. *In Re PES Holdings, LLC*, No. 18-10122 (Bankr. D. Del., Apr. 4, 2018). That is over triple the amount of relief that EPA granted the three small refineries at issue in the *RFA* case. I'm also told that the draft brief, which the Department of Justice (DOJ) prepared for EPA in the *RFA* case, challenged petitioners' standing claims. I understand that your agency directed DOJ to remove the challenge(s) to petitioners' standing claims prior to filing the brief with the U.S. Court of Appeals for the Tenth Circuit.

   Why did EPA decide not to challenge petitioners' standing claims in the *RFA* case?

   EPA Response: The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ) work together when defending litigation filed against the Agency and determine collaboratively whether raising standing issues in a given case is warranted. EPA notes the court in the *Renewable Fuels Association* case concluded that the biofuels groups had standing. *See Renewable Fuels Ass'n et al. v. EPA*, 948 F.3d 1206, 1230-1239 (10th Cir. 2020).

2. EPA's Guidelines for Carcinogen Risk Assessment apply to all offices within EPA, including the Integrated Risk Information System (IRIS) program. The Guidelines define and explain how "mode of action" may be used to evaluate the potential carcinogenicity of a chemical compound. I understand that, for some chemical compounds, the findings of health effects studies are sufficient to establish a mode or modes of action. However, the Guidelines also state that: "In the absence of sufficiently, scientifically justifiable mode of action information, EPA generally takes public health-protective, default positions regarding the interpretation of toxicologic and epidemiologic data: animal tumor findings are judged to be relevant to humans, and cancer risks are assumed to conform with low dose linearity."

   a. Would you please list all the pending IRIS risk assessments that have not used a mode or modes of action?

      EPA Response: Mode of action (MOA) analyses are always conducted during IRIS chemical assessments when a potential cancer hazard is identified in accordance with EPA cancer guidelines. MOA analyses determine whether or not the MOA information is sufficient to establish the key events underlying carcinogenicity and whether the MOA(s) informs dose response. This

determination/rationale is clearly documented in each IRIS assessment, which then undergoes independent, external peer review to ensure scientifically defensible assessment conclusions.

b. For each of the pending IRIS risk assessments that have not used a mode or modes of action, has IRIS correctly determined that there is an absence of sufficiently, scientifically justifiable mode of action information?

EPA Response: All pending IRIS chemical assessments have conducted MOA analyses when a potential cancer hazard was identified. The determination/rationale for whether the MOA information is sufficient to establish the key events underlying carcinogenicity and whether the MOA(s) inform dose-response analyses is clearly documented in each assessment, which then undergoes independent, external peer review to ensure scientifically defensible assessment conclusions.

3. How will EPA's proposed "Strengthening Transparency in Regulatory Science" rule affect the public disclosure of the scientific studies and underlying data upon which IRIS bases its risk assessments?

a. Will the proposed rule result in public disclosure of that information in advance of the publication of IRIS' draft risk assessments?

EPA Response: EPA received comments on this issue during the public comment period for the proposed rule. We are considering these comments in developing the final regulation.

The EPA's Strengthening Transparency in Regulatory Science rulemaking was first proposed before I rejoined the Agency on April 20, 2018 as Deputy Administrator. In response to the proposed rule, the Agency received close to a million comments, and after being briefed on the rule and the comments as Administrator, I directed EPA staff to issue a supplemental proposal to take additional comments because I want to make sure that the Agency gets this rule right. I signed the supplemental notice on March 3, 2020, and we asked for the public to provide comments by April 18, 2020. In response to concerns raised by public health officials, members of Congress, and state officials—who, like EPA, have been focused on delivering our most critical public health missions while responding to the COVID-19 virus—I decided to extend the public comment period for an additional 30 days, through May 18, 2020.

Transparency in science that enables the independent validation of scientific conclusions is important to advancing the Agency's mission. In no way does the proposed rule or the supplemental notice suppress research or censor scientists. On the contrary, it acknowledges that all science is welcome at the Agency and provides a clear awareness to researchers and the general public that, if finalized, the Agency will utilize procedures with the goal of making the science

on which future significant regulatory decisions are based more transparent while still ensuring the protection of confidential business information (CBI) and personally identifiable information (PII). The supplemental notice asked for public comment on all of these important considerations. We are in the process of developing the final rule and I expect it to be complete very soon.

Senator Capito:

4. The replacement of the Obama Administration's illegal *Clean Power Plan* – which would have been disastrous for ratepayers and was a gross overreach of the EPA's statutory authority – with the new *Affordable Clean Energy Rule* is one of the most closely watched rulemakings of the Trump Administration. The new rule balances the rule of law with what is economically feasible and protective of the environment, while continuing the progress this country has made on reducing emissions of carbon dioxide and criteria pollutants.

    a. Can you provide a status update on the implementation of the rule?

    EPA Response: On July 8, 2019, EPA finalized the Affordable Clean Energy Rule (ACE). The deadline for states to submit their plans is July 8, 2022, meaning we are more than a year into the implementation process with less than two years left until plans are due. Many states have started taking initial steps in collecting data and constructing blueprints for state plans. States have already started demonstrating their ingenuity in developing plans that fit within the flexibility of ACE while also tailoring source-specific standards. EPA is committed to working with the states throughout this process. We have set up an internal national implementation workgroup with the EPA Regional Offices and have been keeping an active and ongoing dialogue with states and utilities.

    b. Any regulatory protections for compliant electric generators now being slammed by the suppressed demand resulting from COVID-19 economic upheaval would at least remove a major source of regulatory uncertainty from the list of current headwinds facing utilities. Is the EPA making any accommodations for "early compliance" for coal and natural gas plants that can currently meet the emissions criteria in the final rule, so that thermally efficient coal and gas units can benefit from a degree of regulatory certainty?

    EPA Response: As mentioned in the previous response, state plans for the Affordable Clean Energy (ACE) Rule are due July 8, 2022 and we expect that many states will submit their plan very near that deadline. However, we are aware that some states are actively pursuing or considering early plan submissions. The earlier a state plan is submitted, the earlier it can be reviewed and potentially approved by EPA. An approved state plan will then provide regulatory certainty to the designated facilities within that state. Also, note that ACE only requires state plans to establish requirements for coal plants, not natural gas plants.

5. The West Virginia Department of Environmental Protection (WVDEP) and the staff at EPA Region III have been working collaboratively to finalize the federal review of the state's hardness-based aluminum water quality standard. I am encouraged to hear that the pace of interactions between the state and EPA has picked up and we may be nearing the end of a regulatory process that has been pending since 2016. Any efforts to expeditiously conclude this process would be greatly appreciated by the state. When do you think the EPA will be able to finalize its review of this standard for WVDEP?

   EPA Response: EPA expects to complete our review of the new information and rationale provided by the state in early 2021 to make our determination about whether to approve or disapprove the state's proposed standard. EPA will also coordinate with the U.S. Fish and Wildlife Service to ensure its timely review of EPA's determination.

6. As long as the Renewable Fuel Standard (RFS) remains the law of the land, I believe the federal government should be prioritizing the transition from renewable fuels that disrupt agricultural markets and consumer food prices in favor of cellulosic, biomass, and other advanced biofuels. To that end, a constituent company in West Virginia, Air Liquide, has submitted three of the 19 pathway petitions currently pending before EPA to generate cellulosic renewable identification numbers (RINs) associated with production of a renewable transportation fuel from waste-derived biogas. Similar pathways have been approved by EPA, but these three petitions have been pending, in some cases, for years. It is my understanding they have been reviewed by EPA technical and political staff and await your approval. What is the status of these petitions and can you provide a timeline to complete their review?

   EPA Response: EPA does not currently have a timeline for completion of the review of the Air Liquide petitions. EPA continues to review new fuel pathway petitions, including those, like Air Liquide's, related to hydrogen. This type of petition introduces complex issues that require careful consideration to ensure the ongoing effectiveness and integrity of the Renewable Fuel Standard (RFS) program.

Senator Cramer:

7. North Dakota is a major energy producer including coal, gas and oil. The last administration wanted to just keep driving emissions down under the Regional Haze program without stopping to think about what the program is all about: visibility improvement. However, the cost of compliance can actually lead to plant closures, which seems like a steep price to pay for visual improvements unnoticeable to the naked eye. North Dakota is already a national leader in air quality and we are one of the few states that is in compliance with all of the National Ambient Air Quality Standards. In August 2019, the EPA under your leadership released final guidance outlining the flexibilities states have to comply with the program under the Clean Air Act. Can you provide examples of some of the flexibilities available to states as they create their State Implementation Plans?

EPA Response: EPA finalized revisions to the Regional Haze Rule in January 2017 and released the final regional haze guidance document in August 2019 (August 2019 Guidance). The August 2019 Guidance supports key principles of regional haze program implementation and is intended to help states in developing second planning period State Implementation Plans (SIPs) for complying with the Clean Air Act's (CAA) visibility requirements; reducing state planning burdens; and leveraging emissions reductions achieved through CAA and other programs that further improve visibility in protected areas. The August 2019 Guidance further aids states by providing information about EPA's understanding of the discretion and flexibilities states have within the statutory and regulatory requirements. The regional haze program is an iterative program that provides states with flexibility to develop a cohesive strategy that demonstrates reasonable progress towards eliminating manmade visibility impairment over time. Importantly, there is no specified outcome or amount of emissions reduction or visibility improvement that is directed as the reasonable amount of progress for any Class I area.

The CAA identifies four factors that states must consider in determining what constitutes "reasonable progress" towards eliminating manmade visibility impairment in Class I areas. The four factors are: costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts of compliance, and remaining useful life of any existing source subject to such requirements. The Regional Haze Rule, which implements the statutory requirements for making reasonable progress, does not mandate specific control decisions for specific sources. Rather, the Regional Haze Rule and the August 2019 Guidance support approaches that states can undertake to conduct control measure analyses that consider the four statutory factors for reasonable progress, including cost of compliance. In addition, states have considerable discretion and flexibility to set reasonable compliance deadlines, including deadlines beyond the end of the second planning period (2028), if justified for specific sources. For example, the August 2019 Guidance states that the time necessary for compliance is a source-by-source question, and in the preamble to the 2017 Regional Haze Rule revisions, EPA acknowledged that states have "substantial discretion" in establishing reasonable compliance deadlines. States may also consider the visibility benefits of potential control measures when determining what is necessary to make reasonable progress. The States have the flexibility to decide how to characterize the factors, but a state's approaches must be reasonable and consistent with the statute and regulations. Technically-sound facts regarding costs, visibility benefits, and other factors will help states make well-reasoned, technically-sound decisions.

EPA's near-term goals are to provide technical and policy information for the upcoming second planning period to assist states in their SIP development process by improving the efficiency and reducing the resources needed to meet the regional haze statutory and regulatory requirements. EPA encourages states to discuss SIP development approaches with their EPA Regional office early in their SIP development process.

8. East and West coast states have abused their authority under section 401 of the Clean Water Act. In the case of Washington state, they denied a water quality certification with prejudice, meaning the applicants cannot even refile. This is despite the fact, their own environmental review said: "There would be no unavoidable and significant adverse environmental impacts on water quality." Similarly, New York recently rejected the Northeast Supply pipeline on section 401 grounds, yet one of the reasons cited was the pipeline was incompatible with New York's newly minted climate law. The 401 permit is restricted to water quality. States should stick to that test. The Obama administration's WOTUS and Clean Power Plan proposals were found illegal and burdensome because they overstepped the bounds of the law. Similarly, some states are overstepping their 401 authority to make it about everything but water quality. What is EPA doing to ensure these sorts of abuses do not happen in the future?

   EPA Response: Clean Water Act (CWA) section 401 gives states and authorized tribes authority to assess potential water quality impacts of discharges from federally permitted or licensed projects that may affect navigable waters within their borders. Properly implemented, CWA section 401 is an important tool that can be used to help protect water quality while allowing federal permitting and licensing processes to proceed in a timely manner. On July 13, 2020, EPA published in the *Federal Register* a final rule that increases the transparency and efficiency of the CWA section 401 certification process in order to promote the timely review of infrastructure projects while continuing to ensure that Americans have clean water for drinking and recreation.

9. In the last year, the Supreme Court and EPA have considered whether discharges that travel underground or through groundwater to Waters of the U.S. are subject to the Clean Water Act. Last month, the Supreme Court issued its decision in *County of Maui v. Hawaii Wildlife Fund*, finding that these discharges may be subject to the Clean Water Act when they are "functionally equivalent" to a direct discharge. If interpreted liberally, the vagueness of this decision could put other non-point sources at risk, specifically farmers and ranchers who use fertilizer, recycle their waste, and utilize subsurface tiling to manage water within their fields. These discharges were clearly never meant to be regulated by the federal government. What clarity can EPA provide to stakeholders and constituents following the County of Maui decision?

   EPA Response: On April 23, 2020, the Supreme Court issued an opinion in *County of Maui v. Hawai'i Wildlife Fund*, 140 S. Ct. 1462 (2020), addressing the question of whether a Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit is required for releases of pollutants from a point source that passes through groundwater before reaching a navigable water. In a 6-3 decision, the Court held that an NPDES permit is required "when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge." *Id.* at 1476 (emphasis in original). In describing the new "functional equivalent" standard, the Court stated that "an addition [of a pollutant] falls within the statutory requirement that it be 'from any point source' when a point source directly deposits pollutants into navigable waters, or when the discharge reaches the same result through roughly

similar means." *Id.* The Court listed seven factors that "may prove relevant (depending upon the circumstances of a particular case)" in determining if an NPDES permit is required. *Id.*

On December 10, 2020, EPA published draft guidance that clarifies how the Supreme Court's decision in *County of Maui v. Hawai'i Wildlife Fund* should be applied within the NPDES permit program. This guidance will help clarify when a NPDES permit is necessary under the Clean Water Act. Additional information is available at https://www.epa.gov/npdes/releases-point-source-groundwater.

10. EPA has a premier audit and inspection program for Good Laboratory Practices (GLPs), recognized worldwide. However, EPA does not issue certificates of GLP compliance for laboratories, as other nations do, that would make it easier for many regulatory authorities in countries around the world to recognize the GLP credentials of regulatory studies conducted in the US. This places US contract research laboratories and US businesses at an economic and competitive disadvantage in seeking product marketing approvals in those countries and exporting their products and services. EPA has recently received additional funding from PRIA4 to enhance the GLP program. What specific changes to US regulations and/or legislation would be necessary to allow/require EPA to issue such GLP certificates? What changes could be made under President Trump's May 19, 2020 Executive Order 13924 on economic recovery from COVID-19 to accomplish this?

<u>EPA Response</u>: The Pesticide Registration Improvement Extension Act of 2018 (PRIA 4) directs EPA to set aside existing maintenance fee funds, up to $500,000 collected from pesticide registrants, in support of the continued registration of their products towards enhancements to the Good Laboratory Practices (GLP) program. The passage of PRIA 4 was specific to increasing the number of inspections and data audits being conducted, and per the language, timeliness in providing the preliminary summary of inspection observations not later than 60 days after the date on which the inspection is completed. EPA's approach to GLP is governed by its regulatory framework which does not call for the issuance of laboratory compliance certificates. EPA's GLP program supports the acceptance of data for regulatory purposes. The Agency is not aware of any significant, industry-wide observations that have impacted international product marketing approvals. EPA has promulgated GLP regulations to assure the quality and integrity of data submitted as part of the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), (40 CFR part 160), and the Toxic Substances Control Act (TSCA), (40 CFR part 792). The Food and Drug Administration (FDA) has also promulgated GLP regulations to assure data quality and integrity as part of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 CFR part 58). Many testing facilities subject to EPA rules may also perform testing for FDA. Over the years, FDA and EPA have collaborated to maintain a harmonized approach to GLP compliance monitoring so as not to erode consistency between the organizations and not be administratively and operationally burdensome, increase costs, and add unnecessary complexity upon the regulated industry.

Executive Order 13924 requires agencies to address the economic emergency caused by COVID-19 by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery. New regulations and significant additional resources would be required to establish a GLP certification program instead of the current inspection and study audit compliance monitoring program. There is no evidence that has been presented to EPA that companies seeking pesticide product registrations are being inhibited economically by not having a GLP certification during the COVID-19 public health emergency. When a company has been inspected by EPA, they are able to provide information to foreign countries that they have been inspected and the findings.

11. The robust and rigorous pesticide regulatory program administered by the EPA is highly regarded by governments around the world. Many trading partners welcome imports of trusted pesticide products from US sources, which have the benefit of our regulatory program, but they need reasonable assurance of the source of the products, in order to combat contraband and counterfeits that are significant problems in some countries. Such counterfeit products can have a potentially harmful effect here at home in the form of residues on foods imported into the United States, from pesticide products of unknown origin and dubious quality. Four years ago, EPA discontinued its policy of providing Certificates of Origin for exported pesticide products to provide this assurance to importing countries, causing no small disruption for US businesses and their international customers. The fee-for-service language of FIFRA authorizes EPA to issue "Letters of Certification" for pesticide products, but the Agency has chosen not to include Certificates of Origin under this provision. What policy change could be made under the recent Executive Order 13924 (May 19, 2020; "Regulatory Relief To Support Economic Recovery") to resume issuing Certificates of Origin?

<u>EPA Response</u>: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is silent on the authority to issue certificates of origin. The statutory wording of the M006 fee category description under the Pesticide Registration Improvement Extension Act of 2018 (PRIA 4) is clear that the letter of certification is specific to Gold Seal letter requests.[1]

A Gold Seal letter is an EPA document certifying that a pesticide product is currently registered. Registration status is easily confirmed by consulting EPA tracking databases, and EPA can certify the status with certainty. EPA has received and processed 500 to 600 such requests each year since the category was created in the Pesticide Registration Improvement Extension Act (PRIA 3). Countries from around the globe regularly require a Gold Seal letter from EPA to confirm that a product, which may be proposed for import/use in a foreign country, is currently registered for use in the United States and has been determined to be safe to human health and the environment in accordance with U.S. safety standards.

[1] "Request for up to 5 letters of certification (Gold Seal) for one actively registered product (excludes distributor products)." (133 STAT. 576, Pesticide Registration and Improvement Extension Act of 2018, Public Law No: 116-8, March 8, 2018)

EPA has concerns about its ability to verify information to issue certificates of origin under FIFRA, particularly of certifying that production of a certain product has occurred at a specific establishment. EPA does not have the information necessary to certify the origin of an exported pesticide, registered or unregistered, arriving at a foreign destination. EPA only knows that an establishment reported the information that is in EPA's FIFRA Section Seven Tracking System (SSTS) database, not that a given product was actually produced at that facility at the batch level. EPA would need inspections and audits before a shipment is released to be able to certify that a specific batch was produced at a specific establishment. EPA is also concerned about the potential for misunderstanding by the importing country of what such a certificate would and would not indicate.

In 2016, EPA created a public webpage which provides an up-to-date list of all current EPA-registered establishments (over 14,000) (https://www.epa.gov/compliance/national-list-active-epa-registered-foreign-and-domestic-pesticide-andor-device-producing). This webpage allows foreign governments and the public to verify that the establishment number identified on the pesticide product is a legitimate EPA-registered establishment. EPA has not received any indication from foreign governments that the provided information is insufficient. It would be helpful to have additional information regarding the specific obstacles U.S. companies are encountering and identify which foreign governments have expressed a need for this information.

Executive Order 13924 requires agencies to address the economic emergency caused by COVID-19 by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery. New regulations would be required to provide certificates of origin in conjunction with significant additional resources to create the infrastructure for batch-level compliance monitoring at each establishment.

Senator Braun:

12. At the staff level, EPA has noted to several agriculture industry representatives that the agency believes that there is a conflict in the scientific literature regarding the biogenic carbon emissions from the processing of annual crops. EPA has privately noted that this conflict makes it difficult for the Agency to provide regulatory clarity.

    However, as I noted during my testimony, on May 18, 2020, 21 scientific experts sent a letter to the agency noting that the science is relatively straightforward.

    a. Clarity on this question is critical as the agency works on a de minimis standard for annual crops. Please provide a detailed statement indicating which specific studies or sources, if any, EPA has identified that currently prevent it from establishing a de minimis standard for biogenic carbon emissions associated with the processing of annual crops.

<u>EPA Response</u>: As I said during the hearing, the Agency intends to put forth a proposed rulemaking on emissions related to using agricultural crops for energy in the future, as resources and policy priorities allow. EPA's assessment of the scientific literature in this area will be presented as a part of the future rulemaking.

b. If, in fact, the Agency believes that there is a scientific conflict that inhibits rulemaking, please state in detail what that conflict is and what steps the Agency has taken since 2011 to address any conflicts, uncertainties, or relevant questions.

<u>EPA Response</u>: We have determined that a phased approach is the most efficient process to allow the Agency to clearly and defensibly address all relevant feedstocks.

13. It is also important to note EPA's current regulatory environment pertaining to biogenic carbon emissions stands in sharp contrast to that taken by most other OECD countries. Why is that the case?

<u>EPA Response</u>: Greenhouse gases are air pollutants subject to regulation under the Clean Air Act and have been subject to regulation under the Clean Air Act since the standards in the light-duty vehicle rule went into effect in January 2011. EPA recognizes the unique attributes of biogenic carbon and is pursuing a phased approach to allow the Agency to clearly and defensibly address all attributes of relevant feedstocks. The first phase was EPA's April 2018 policy statement making clear that in future regulatory actions biomass from managed forests will be treated as carbon neutral when used for energy production at stationary sources. The second phase, the current rulemaking to address woody biomass, is in process and is with OMB for interagency review. The third phase is prospective. It is EPA's intention to address agricultural feedstocks in a future subsequent rulemaking as resources and policy priorities allow. (https://www.epa.gov/sites/production/files/2018-04/documents/biomass_policy_statement_2018_04_23.pdf) Other Organisation for Economic Co-operation and Development (OECD) countries, of course, operate in an altogether different regulatory environment.

14. In September 2018, EPA issued a draft "EPA Tampering Policy" to amend outdated enforcement policies.

The draft EPA Tampering Policy will provide industry with the tools it needs to produce and test twenty-first century emissions-compliant products. Technology advances in the decades since the agency issued Mobile Source Enforcement Memorandum 1A (Memo 1A) (1974), the aftermarket catalytic converter enforcement policy for light-duty gasoline engines (1986), the exhaust-system-repair guidelines (1991), and the engine switching fact sheet (1991), justify new updates to these policies.

However, EPA has not yet indicated when enforcement guidelines will be issued. Can you provide an update as to when the EPA intends to finalize a Tampering Policy that provides the aftermarket auto-parts industry with an effective and efficient means for compliance?

EPA Response: The EPA has updated Clean Air Act enforcement policy concerning vehicle and engine tampering and aftermarket defeat devices. The updated policy is called the "EPA Tampering Policy" and will restate long-standing enforcement policy, but in terms of today's technology and in a single document. This updated policy will complement the Agency's enforcement efforts, which are ongoing and focused on companies that defeat the emissions controls designed to protect air quality. Separate from the Tampering Policy, EPA is also seeking information to help the Agency decide later whether to withdraw a 1986 enforcement policy regarding replacement catalytic converters. The updated policy and *Federal Register* Notice can be found on this web page, under the "Mobile sources of air pollution" section: https://www.epa.gov/enforcement/air-enforcement-policy-guidance-and-publications#Mobile.

15. Senate Bill 2754 provides for a 15-year phasedown of hydrofluorocarbons (HFC), and is generally modeled on EPA programs that, over the past 30 years, guided transitions out of earlier generations of refrigerants, such as chlorofluorocarbons (CFC) and hydrochlorofluorocarbons (HCFC).

    a. If S.2754 were enacted, would you foresee EPA implementing the program in a manner that is substantially similar to these existing EPA programs?

    EPA Response: If S.2754, the American Innovation and Manufacturing Act of 2019, becomes law, EPA would likely leverage existing Clean Air Act Title VI programs to implement S.2754. However, there are important differences between Title VI and S.2754. For example, S. 2754 phases down hydrofluorocarbons (HFCs), rather than phasing them out entirely. This means there is a limited (15 percent of baseline) amount that would continue to be used indefinitely. If S.2754 becomes law, EPA would develop and implement an appropriate regulatory program that builds on lessons learned during the phaseout of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs).

    b. The U.S. air conditioning and refrigeration industry is by far the largest user of HFCs and would be the most heavily affected by the bill. However, during a recent effort by the Committee on Environment and Public Works to seek stakeholder comments on the bill, concerns were raised by other sectors that use small amounts of HFCs. I understand that, in prior chemical transitions in the 1990s and early 2000s, these same sectors raised similar concerns, and that the EPA was able to implement the program in a manner that granted enhanced flexibilities to specific sectors.

    Can you discuss how EPA was able to provide flexibilities to niche applications and small users under past transitions under the Clean Air Act and whether that would be possible in a future transition?

<u>EPA Response</u>: During the 1990s and 2000s, as the EPA designed Title VI programs, the Agency provided flexibility consistent with the Clean Air Act to ensure a successful ozone depleting substances (ODS) phaseout. These flexibilities included continued use of ODS where necessary, identifying transitional substitutes (*e.g.*, transition from CFCs to HCFCs prior to the HCFC phaseout), and the recovery and reuse of ODS in legacy systems.

Congress recognized when designing Title VI that some uses may be harder to transition than others. The EPA implements an essential use process that provides for the continued use of certain phased out ODS in limited situations (*e.g.*, continued consumption of CFCs for metered dose inhalers for the treatment of asthma). The EPA also exempted certain ODS uses from other Title VI complementary provisions such as an exemption for CFCs and HCFCs used as aerosol propellants for use in certain niche applications.

One important distinction between Title VI and S. 2754 is that EPA was tasked under the Clean Air Act with phasing out ODS with limited exceptions. S. 2754 would provide greater flexibility to HFC users by phasing down instead of phasing out HFCs and allowing 15 percent of the historic baseline to continue to be produced or imported indefinitely. This continued amount of HFCs would allow some HFC uses to continue into perpetuity.

Recovery and recycling of ODS also allows for users to continue using a substance for servicing as well as in new equipment well after it was phased out. For example, while halon has been phased out in the United States since 1994, new aircraft continue to be manufactured in the United States with fire suppression systems using recycled halon. The Agency has prioritized allowing equipment to reach the end of its useful life before it needs to be replaced. Recovery and recycling also continue to support users of CFC- and HCFC-based equipment, with more than 9 million pounds of ODS reclaimed each year. S. 2754 provides authority to EPA to support recovery and recycling of HFCs.

16. In September 2019, Congress included report language in the Interior and Environment Appropriations Bill urging the EPA to provide regulatory certainty with respect to production, transfer, and use of biointermediates. This report language follows a July 2019 bipartisan Senate letter requesting the same.

    I urge you to act quickly on this matter, as a major investment in Indiana is awaiting regulatory clarity on biointermediates before it can begin commercialization.

    Can you provide a date certain for final action on this rule?

    <u>EPA Response</u>: The question of how to move forward with biointermediates is complex and requires careful consideration to ensure the ongoing effectiveness and integrity of

the Renewable Fuel Standard (RFS) program. EPA is currently evaluating options for how to proceed.

Senator Wicker:

17. On June 11, 2015, I sent a letter to the Environmental Protection Agency regarding the electronic delivery of certain federally mandated Safe Drinking Water Act (SDWA) notices. Tier 2 notices inform consumers about violations and situations with potential to have adverse health impacts on human health, and Tier 2 notices are currently required to be mailed to customers. This can be expensive for rural and small communities, and many ratepayers now check their email more frequently than their physical mailbox. In 2013, EPA interpreted that SDWA authorizes the use of electronic delivery for Consumer Confidence Reports (CCRs). Last year, the EPA Inspector General issued a report affirming that electronic delivery of Tier 2 public notices is authorized under SDWA. However, electronic delivery methods are not being utilized because EPA has not stated this in policy. Allowing small and rural communities to deliver Tier 2 notices electronically would save ratepayers money while expanding public access to this information.

    Does EPA's 2013 memorandum regarding Safe Drinking Water Act - Consumer Confidence Reports Rule Delivery Options extend the authorization of "electronic delivery" of federally mandated public notices to Tier 2 notices?

    EPA Response: The 2013 memorandum does not address Tier 2 notices, but the public notice regulations at 40 CFR 141.203 allow primacy agencies to approve alternate delivery methods, including electronic delivery, for Tier 2 public notices in writing.[2] **EPA will work to ensure our rural and small communities understand the flexibilities that are available under existing regulations, and will send information to our state partners encouraging them to expand the use of electronic delivery methods.**

Senator Ernst:

18. On November 18, 2019, a bipartisan group of 18 Senators wrote to you expressing the need for clarity regarding EPA's regulation of biogenic CO2 emissions from the processing of annual crops. This is just one of many communications that have occurred over the last decade on this issue with EPA, including a letter from five governors. During your testimony before this committee on May 20th, you stated that EPA is taking a three-phase approach over the next 1.5 years to providing clarification on biogenic CO2. Your comment at the hearing implied that regulatory clarification regarding annual crops' status could continue to be delayed to a third phase, more than a year from now. Please respond to the following questions:

[2] *See* 40 CFR 141.203 at: https://www.govinfo.gov/content/pkg/CFR-2014-title40-vol23/pdf/CFR-2014-title40-vol23-part141-subpartQ.pdf.

a. Describe the Agency's three-phase approach to biogenic CO2 policy and the reasoning that informed this approach.

<u>EPA Response</u>: The Agency has determined that a phased approach is the most efficient process to allow the Agency to clearly and defensibly address all relevant feedstocks. The first phase was EPA's April 2018 policy statement making clear that in future regulatory actions biomass from managed forests will be treated as carbon neutral when used for energy production at stationary sources. The second phase, the current rulemaking to address woody biomass, is in process and is with OMB for interagency review. The third phase is prospective. It is EPA's intention to address agricultural feedstocks in a future subsequent rulemaking as resources and policy priorities allow.

b. Provide the current plan, including timing and the dedicated resources, that the Agency will implement in order to clarify its biogenic CO2 policy for annual crops

<u>EPA Response</u>: As detailed in the response to Question 18(a) above, the Agency has determined that a phased approach is the most efficient process to allow the Agency to clearly and defensibly address all relevant feedstocks. The first phase was EPA's April 2018 policy statement making clear that in future regulatory actions biomass from managed forests will be treated as carbon neutral when used for energy production at stationary sources. The second phase, the current rulemaking to address woody biomass, is in process and is with OMB for interagency review. The third phase is prospective. It is EPA's intention to address agricultural feedstocks in a future subsequent rulemaking as resources and policy priorities allow.

c. Has EPA consulted with USDA, with respect to its biogenic CO2 policy for annual crops? Please describe those consultations, including any exchange of scientific studies and materials that may have occurred. If not, when and how will EPA work with USDA to achieve timely agreement and resolution on this matter?

<u>EPA Response</u>: The third phase intends to address agricultural feedstocks. As the process progresses, we plan to engage with interagency partners including the U.S. Department of Agriculture (USDA).

d. If insufficient resources are a hurdle to the Agency issuing a new final standard for annual crops within that 1.5 year schedule, what additional appropriations would the Agency recommend beyond the FY20 appropriated amounts or described in the FY21 budget request? What would those funds enable EPA to do that it currently cannot in order to complete this regulatory action expeditiously?

<u>EPA Response</u>: The time frame is not dictated by Agency resources, rather it reflects our judgment that this phased approach is the most appropriate way to address all relevant feedstocks through rules that are not only developed expeditiously but are also sound and legally defensible.

19. EPA stated in its Waste Reduction Model (WARM) that biogenic CO2 is not a contributor to climate change. The Agency's GHG inventory recognizes that biogenic emissions from agricultural feedstocks are both a source and a sink of emissions, with little net addition of GHGs to the atmosphere. Why then are biogenic carbon emissions from the processing of annual crops subject to different treatment in the PSD context?

    EPA Response: Greenhouse gases, including biogenic CO_2, are air pollutants that have been subject to regulation under the Clean Air Act (CAA) since the standards in the light-duty vehicle rule went into effect in January 2011. Tools such as the Waste Reduction Model (WARM) and GHG Inventory are emission quantification tools that reflect methodologies for estimating and reporting greenhouse gas emissions and sequestration in their respective contexts and are not intended to be used as assessments of the greenhouse gas effects of using bioenergy at stationary sources regulated under the CAA.

20. Mr. Wheeler, following up on my question from the hearing, you indicated that it was "more complicated" to allow E15 to be dispensed from existing infrastructure already approved for ethanol-blended fuel. In particular, you mentioned concerns about underground storage tanks and the potential for leaks. All double-walled, fiberglass tanks manufactured for the last 30 years (since 1990) and all steel tanks are already approved for up to 100% ethanol [https://afdc.energy.gov/files/u/publication/e15_infrastructure.pdf]. For dispensers, the vast majority of dispensers are also approved for E15. Wayne Fueling Systems and Gilbarco have more than 90% of the combined dispenser market in North America. Wayne has approved all of its dispensers to carry E15, and since 2016, they've approved their dispensers for use of ethanol blends up to E25 (https://wayne.com/en/press-releases/2016-08-30-wayne-standardizes-offering-for-all-north-american-retail-fuel-dispensers-to-e25/). Gilbarco has approved their dispensers since 2008 for use with E15 (https://csnews.com/gilbarco-expands-dispenser-warranty-e15).

    a. When can we expect the agency to move forward with expediting the sale of E15 through existing infrastructure?

        EPA Response: EPA fully supports the safe expanded use of E15 and is working closely with our industry and state partners to ensure underground storage tank (UST) compatibility issues are fully understood. EPA agrees that all double-walled fiberglass tanks manufactured since 1990 are compatible with up to 100% ethanol. Yet, EPA knows that there are many facilities that still have single wall fiberglass USTs installed which are incompatible with E15. In addition, compatibility requirements extend beyond the fuel tank (and dispensers) and include other components of the overall UST system, such as pumps, ancillary equipment, gaskets, and sealants. For this reason, EPA expects nearly all existing UST systems that do not currently store higher ethanol blends would need some level of upgrade before they can safely and legally store E15. In some cases, the upgrades will be relatively minor (*e.g.*, replacing the pumping system), but in other cases the upgrades will be more significant (*e.g.*, UST

systems with single-walled fiberglass tanks). Storing and dispensing E15 at gas stations with equipment that is not compatible with higher blends of ethanol fuel can result in leaks and releases that contaminate land and groundwater. EPA has conducted extensive outreach to the regulated community to ensure that they fully understand the complex issues surrounding UST compatibility with E15 and is committed to continuing its compliance assistance activities to ensure safe storage of E15.

21. Mr. Wheeler, your own agency approved E15 for all 2001 and newer light-duty vehicles nearly a decade ago after 6 million miles of testing. Since that time, consumers have driven more than 14 billion miles on E15 and retailers have had millions of transactions with the fuel without a single reported issues. As I mentioned at the hearing, model year 2001 and newer vehicles represent more than 9 out of 10 cars on the road today and more than 95 percent of the vehicle miles traveled. Quite simply, it has been two decades since a car was produced that is not approved by EPA for use with E15, so it seems unnecessary to continue to require unnecessary labeling for this fuel.

    a. When can we expect the agency to move forward with removing the label as you committed last fall?

    EPA Response: EPA is currently examining E15 labeling requirements. We are working with appropriate stakeholders to evaluate opportunities to streamline the existing E15 pump label regulations as needed to allow consumers fuel choices at the pump while still protecting not only older vehicles but also nonroad engines.

22. Corn producers are staring at economic conditions not seen since the farm crisis of the 1980s, and biofuel facilities are closing and shedding high-paying jobs across the country. One low cost way to add value to the corn crop and improve margins for ethanol producers is to approve corn fiber applications to produce cellulosic biofuel from corn kernel fiber, turning what is otherwise a waste material into fuel.

    a. There are corn fiber applications that have been pending at the EPA for almost three years, during which EPA has done nothing but throw up roadblock after roadblock. This isn't anywhere close to the regulatory certainty this Administration has promised. Will you commit to personally reviewing this situation and ensure these applications have a clear path to resolution consistent with the regulatory pathway EPA established in 2014?

    EPA Response: EPA has taken steps to provide clarity with respect to our approach to corn kernel fiber under the RFS program. In May 2019, EPA issued guidance in response to stakeholders seeking clarification regarding acceptable methods for determining what is known as the "cellulosic converted fraction." This guidance, available on the Agency's website, articulates criteria for the type of analysis and demonstration that EPA believes would be an appropriate basis for corn fiber registration under the program.

Ranking Member Carper:

23. COVID-19 will be with us for many months, if not years, even if rapid vaccine development efforts are successful. EPA has frequently observed that some of the early studies linking air pollution and adverse COVID-19 outcomes have not yet been peer reviewed. The Centers for Disease Control has warned that people with diabetes and heart disease (among other pre-existing conditions) may be at higher risk for serious illness from COVID-19. Moreover, in the May 20th hearing, you agreed that EPA's own work has demonstrated that there is a clear link between exposure to air pollution and higher incidences of diabetes and heart disease. I then asked you to commit to ensuring that these health effects and risks are factored into all of the Agency's future air pollution rule-makings as well as its environmental justice efforts. You responded that "we factor diseases such as that into all our rulemakings already," that "we also factor that into our environmental justice programs," and that "all of our rules make things better."

    a. Please provide citations and descriptions of all EPA rulemakings and environmental justice efforts, since January 20, 2017, that factor in diabetes, heart disease, or other systemic health risks, and provide the supporting documentation factoring in such risks or citations to the relevant pages in the documents.

    EPA Response: This Administration has made measurable progress advancing environmental justice. The elevation of the Office of Environmental Justice into the EPA's Office of the Administrator in 2018 has enhanced the collaboration within the Agency and ensures that environmental justice considerations are integrated on the front end of EPA's decision-making process, which includes rulemaking, permitting, and guidance, not at the back end of EPA's enforcement decisions. Regarding rulemaking, rule writers must address in the "Statutory and Executive Order Review" section of their preambles Executive Order 12898 "Federal actions to address environmental justice in minority populations and low-income populations", or that otherwise influence the rulemaking process. For examples of EPA rulemakings that addressing Executive Order 12898, please go to https://www.regulations.gov/.

    Aside from rulemakings, EPA has continued to provide technical assistance, grants, and other tools to ensure environmental justice for communities across the country. A summary of this work is included in EPA's annual EJ Progress Reports. For the most recent report, please see the FY19 Environmental Justice Progress Report (https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19_ej_report-final-web-v2s.pdf).

    b. Please describe EPA's efforts to focus the Agency's Office of Research and Development and its Air, Climate and Energy Centers on determining whether exposure to air pollution (or having an underlying condition with a known link to air pollution) is linked to more adverse outcomes from COVID-19, a higher risk of

contracting the disease, more difficult recovery from the disease, or a higher susceptibility to other diseases following COVID-19.

EPA Response: Currently, EPA's Office of Research and Development (ORD) has no active research specifically addressing whether poor air quality contributes to worse outcomes for patients with COVID-19. There is currently no high-quality peer reviewed data and studies on SARS-CoV-2 infection, and COVID-19 that are not adversely impacted by methodological limitations (see article "Methodological Considerations for Epidemiological Studies of Air Pollution and the SARS and COVID-19 Coronavirus Outbreaks" in NIEHS's Environmental Health Perspectives for some more information - https://pubmed.ncbi.nlm.nih.gov/32902328/), though we expect these studies to be available in the coming years. In the meantime, ORD researchers are conducting a systematic review of the epidemiological, clinical, and experimental toxicological literature to better understand the relationship between air pollutant exposure and risk for developing non-COVID-19 respiratory viral disease. The findings of the systematic review, which will largely focus on influenza, is expected in late 2021 and will help guide future investigations on SARS-CoV-2.

Additionally, the Health Effects Institute, which is partially funded by EPA, has posted a Request for Applications titled "Air Pollution, COVID-19, and Human Health." More information is available at https://www.healtheffects.org/research/funding/rfa-20-1b-air-pollution-covid-19-and-human-health.

24. It is already clear that COVID-19 is having a far more serious impact on lower income communities and communities of color, which often experience more air and water pollution. EPA has used funding Congress provided in the CARES Act to study disinfectants and whether COVID-19 can be detected in wastewater. But, because it is clear that there is much to be learned about this disease and its impacts on Americans, I asked you to commit to re-allocate unused EPA funds to study whether exposure to air pollution causes people with COVID-19 to have worse outcomes or more difficult recoveries, or to be more susceptible to other diseases once they have recovered. You responded that "you are looking at those areas," noted that "a lot of other people are researching that," criticized a recent study from Harvard University, and declined to make such a commitment.

    a. Please describe how EPA plans to re-focus its enforcement, compliance, and monitoring activities in a manner that prioritizes the early detection of high exposure to air pollutants in communities that have both historically experienced such exposures and those at greatest risk of adverse outcomes from COVID-19.

    EPA Response: EPA agrees that it is important to prioritize enforcement efforts to address high exposure to air pollutants. EPA has identified three program areas that address potential exposure to air pollutants as National Compliance Initiatives (NCIs). EPA identifies certain programs as NCIs to ensure that Agency resources are prioritized to address these important areas. The Office of

Enforcement and Compliance Assurance (OECA) develops strategic plans for each of these NCIs and an Executive Board comprised of senior leaders in OECA headquarters and the Regions oversees implementation of the strategies. Three of the six NCIs identified for the FY 2020-2023 cycle address potential exposure to air pollutants.

Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources (CCAC). This NCI focuses on reducing emissions of both volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). For VOC emissions, the NCI focuses on significant sources of VOCs that have a substantial impact on air quality and: (1) may adversely affect an area's attainment of National Ambient Air Quality Standards (NAAQS); or (2) may adversely affect vulnerable populations. For HAPs, this NCI focuses on sources that have a significant impact on air quality and health in communities.

Reducing Toxic Air Emissions from Hazardous Waste Facilities. EPA has found that air emission violations associated with the improper management of hazardous waste remain widespread. The Resource Conservation and Recovery Act requires effective monitoring to identify and repair leaks from certain hazardous waste storage tanks, containers, pipes, valves, and other equipment. Releases from hazardous waste facilities can include releases of constituents known or suspected to cause cancer, birth defects, or that seriously impact the environment. The Agency began this initiative in 2017 and elected to continue this initiative to help achieve EPA's Strategic Plan objectives of addressing vulnerable populations and reducing non-attainment areas.

Stopping Aftermarket Defeat Devices for Vehicles and Engines. OECA also selected Stopping Aftermarket Defeat Devices for Vehicles and Engines as a new NCI for the FY2020-2023 cycle. Mobile sources are a significant contributor to air pollution and EPA, through its direct implementation authority, can play a critical role in addressing these important pollutant sources. Title II of the Clean Air Act (CAA) authorizes EPA to set standards applicable to emissions from a variety of vehicles and engines. Required emission controls often include filters and catalysts installed in the vehicle's or engine's exhaust system, as well as calibrations that manage fueling strategy and other operations in the engine itself. The CAA prohibits tampering with emissions controls, as well as manufacturing, selling, and installing aftermarket devices intended to defeat those controls. EPA has found numerous companies and individuals that have manufactured and sold both hardware and software specifically designed to defeat required emissions controls on vehicles and engines used on public roads as well as on nonroad vehicles and engines. Illegally-modified vehicles and engines contribute substantial excess pollution that harms public health and impedes efforts by EPA, tribes, states, and local agencies to plan for and attain air quality standards.

b. Please describe how EPA plans to enhance its environmental justice grants, tools, and other policy and forms of assistance in light of the disproportionate threats air pollution and COVID-19 pose to residents of lower-income and communities of color.

EPA Response: EPA is strengthening environmental and public health protections for vulnerable, low-income, minority, tribal and indigenous communities in conformance with Executive Order 12898—making measurable progress in improving outcomes for these Americans especially given COVID-19 concerns. EPA is utilizing all available tools within our authorities to combat the spread of the virus. As one example, EPA used supplemental funding to provide $1 million in grant funding available to states, local governments, tribes and U.S. territories to help address COVID-19 concerns faced by low-income and minority communities. Projects funded through the State Environmental Justice Cooperative Agreement (SEJCA) could include sharing information related to EPA-approved disinfectants to combat COVID-19; addressing increased exposure of residents to in-home pollutants and healthy housing issues; and training community health workers. For more information about SEJCA please visit EPA's website at https://www.epa.gov/environmentaljustice/state-environmental-justice-cooperative-agreement-program.

25. On April 1, 2020, 10 of my Senate colleagues joined me in asking you for materials describing how EPA is fulfilling its mission while protecting its employees against the spread of COVID-19.[3] We also asked you to describe any anticipated relaxation of regulatory requirements, and we stressed that modifications to environmental enforcement obligations must be taken only as necessary, temporarily and with full transparency. Your May 8th response was not fully responsive to our requests.

a. Please provide and post on EPA's website all COVID-related regulatory modifications and enforcement waivers issued thus far.

EPA Response: EPA is posting all COVID-related enforcement "waivers" and additional compliance information on our website. EPA created a "*COVID-19 Enforcement and Compliance Resources*" webpage (https://www.epa.gov/enforcement/covid-19-enforcement-and-compliance-resources) to provide up to date information on EPA enforcement and compliance policies related to COVID-19. The webpage includes the following information:

- **EPA's temporary COVID-19 enforcement policy, COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program: https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program;**

[3] https://www.epw.senate.gov/public/_cache/files/6/6/6612fe54-451c-491c-9ebf-b94accc1f197/DA9BF82AB71666433E7ECA4A1842D038.04-01-20-tc-et-al-continuity-of-operations-letter-to-epa.pdf

- **Addendum to the Temporary Policy setting a termination date of August 31, 2020: https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program-addendum;**
- **Frequently Asked Questions: https://www.epa.gov/enforcement/frequent-questions-about-temporary-covid-19-enforcement-policy addressing specific questions asked about application of the temporary policy to specific scenarios;**
- **Fuel Waiver: https://www.epa.gov/enforcement/nationwide-fuel-waiver-concerning-summer-gasoline to address a shortage of compliant fuel due to issues caused by the COVID-19 outbreak and issued pursuant to Section 211(c)(4)(C) of the Clean Air Act, which expired on May 20, 2020;**
- **No Action Assurance: https://www.epa.gov/enforcement/revised-no-action-assurance-use-emergency-generators-specific-companies-operating-puerto to ensure the continued production of pharmaceutical supplies in Puerto Rico, which expired on June 1, 2020;**
- **Additional Guidance specific to environmental compliance during the public health emergency: https://www.epa.gov/enforcement/covid-19-enforcement-and-compliance-resources#other.**

b. Please describe EPA's process for publishing any new enforcement or regulatory changes the Agency takes because of COVID-19 within 48 hours of their issuance going forward.

<u>EPA Response (OECA/OP):</u> EPA has posted these materials to the COVID-19 Enforcement and Compliance Resources webpage as soon as practicable after finalization and will continue to do so for any additional updates or revisions in the future.

26. On May 21, 2020, you informed EPA employees that agency would begin the process of starting Phase 1 of reopening facilities in Regions 4, 7, and 10 (Atlanta, GA; Lenexa, KS; and Seattle, WA).

a. The EPA reopening plan allows employees with childcare responsibilities that have been interrupted by the COVID-19 pandemic to continue to telework during phases 1 and 2 of reopening. Other federal agencies such as the Department of Commerce, the Department of the Interior and Consumer Financial Protection Bureau have also allocated employees with child care responsibilities a limited amount of administrative or excuse leave, so that employees may address unforeseen child care complications during this unprecedented crisis. Will EPA follow this practice and establish the same flexible leave practice to help employees with the lack of adequate child care options during the crisis?

<u>EPA Response</u>: At EPA, our highest priority is protecting the health and safety of all Americans. We are an Agency built on people and we rely on those people to accomplish the Agency's critical mission of protecting human health and the environment. The Agency is taking extensive steps to support our workforce and

our EPA colleagues are doing great work for the American people. The Agency will continue to take actions to combat COVID-19 and assist our federal partners to protect human health and the environment.

EPA has remained operational throughout the pandemic, and during this time Agency staff have risen to the unique challenges posed by COVID-19. We have continued to protect human health and the environment, delivering the same high quality of work to the American public. EPA scientists are working with numerous federal, state, and local stakeholders and are providing input on several aspects of the federal response. The Agency has been working with the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) and other federal entities on guidance for the American public on practical, easy-to-understand steps that can be taken to minimize risk as we respond to COVID-19.

EPA remains committed to working with the CDC and other federal partners as we address this public health crisis across the United States and around the world. We will continue to provide information in a public and transparent manner on disinfectant products to help reduce the spread of COVID-19. EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has worked tirelessly to quickly assess and identify qualified surface disinfectant products that can be used against COVID-19. This effort has ensured that there are more than 500 products for consumer use to disinfect surfaces. On August 24, 2020, Administrator Wheeler announced a first-of-its kind emergency exemption to the state of Texas to allow American Airlines and Total Orthopedics Sports & Spine to use a new product that kills coronavirus like the SARS-CoV-2, the virus that causes COVID-19, on surfaces for up to seven days. Further, the Agency has released a mobile friendly application to allow Americans to easily find out what products are approved by EPA for COVID-19 disinfection. EPA has also discussed with the CDC guidance on cleaning and disinfecting, water system flushing, and research gaps related to understanding and mitigating environmental exposure routes to SARS-CoV-2. The Agency is considering future research efforts to address these gaps.

EPA has continued to actively enforce and ensure compliance with the Nation's environmental laws during these unprecedented times. The Agency is working with states and partnered agencies to continue efforts in ensuring that legal requirements are met by the regulated community. We have increased enforcement work to fight against the sale of products that falsely claim to be effective against SARS-CoV-2. EPA has continued strong enforcement across the board. From March 16, 2020 to August 31, 2020, EPA:

- **Opened 128 Criminal Enforcement Cases;**
- **Charged 36 Defendants;**
- **Concluded 629 Civil Enforcement Actions;**
- **Initiated 603 Civil Enforcement Actions;**
- **Secured more than $80.4 million in Superfund Response Commitments;**

- **Billed more than $59.8 million in Superfund Oversight Costs; and**
- **Obtained commitments from parties to clean up 1,032,832 cubic yards of contaminated soil and water.**

EPA has continued to provide continuous support to emergency response and recovery efforts, working with federal and state partners in Texas, Louisiana, and California to respond to the impacts of hurricanes and wildfires. We understand that COVID-19 has caused disruption in the lives of many Americans—including our employees—but it is our duty to the American people to ensure we are continuing our work towards protecting human health and the environment.

Maintaining the health and safety of our workforce while fulfilling the Agency's mission is our top priority. EPA has taken several steps to support its staff and evaluate how to safely reopen EPA facilities. The Agency relied on experts within EPA for guidance, and EPA's Office of Mission Support (OMS) took the lead in coordinating and developing a reopening plan. The Agency's plan to safely return our employees to the office aligns with the White House's *Guidelines for Opening Up America Again* and the Office of Management and Budget's *Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again* (OMB's Memorandum M-20-23).

The Agency's reopening plan is a gradual approach and creates a framework for each national program and regional office to follow while developing location-specific plans. The plan developed by OMS includes Agency-wide policies and procedures for each specific phase. Following CDC social distancing protocols, EPA's facilities have signage in hallways, elevators, meeting rooms, bathrooms, and other common spaces to direct employees on how to maintain social distancing. Additionally, OMS has consulted with the U.S. General Services Administration on the procurement and placement of plexiglass partitions in some high-traffic areas based on workspace configurations and social distancing needs.

The Agency is taking a transparent, data-driven, and deliberate approach to returning our workforce to Agency offices in a manner that ensures our employees' health and safety. This data-driven approach includes an evaluation of local conditions and state and local health orders to determine how best to initiate office reopenings. The Agency's reopening decisions start with data collected and presented by scientists in EPA's Office of Research and Development (ORD). These ORD scientists designed and developed a dashboard tool, accessible to all Agency employees, that presents at-a-glance views of the status of gating criteria. Specifically, the dashboard tool provides information on the status of this criteria in the commuting area surrounding each of EPA's 124 locations. The dashboard tool also presents maps, graphs, and statistical breakouts for facilities; and analyzes data from the CDC, the Johns Hopkins

University Coronavirus Resource Center, and other sources to identify trends that can help inform reopening decisions.

Throughout the pandemic, the Agency has acted in a deliberate and cautionary manner when making decisions on reopening Agency facilities. With communities recovering at different rates, location-specific conditions are driving the decisions to ensure people are reoccupying our offices in a way that is safe with the appropriate protective measures in place. While the dashboard is a highly specialized tool to assist with the Agency's reopening decisions, it is not the only information considered. EPA leadership reviews all information available, including evaluations of location conditions and state and local orders in conjunction with the EPA's dashboard tool to make decisions on reopening Agency facilities. A decision to enter into any phase is based on a combination of factors, including: (1) an objective assessment provided weekly by ORD scientific experts on the status of each gating criteria in the commuting area surrounding our facility locations; (2) information on city, state and county reopening; (3) other local conditions; and (4) the Agency's commitment to provide safe and healthy workplaces for our employees.

The Agency has continued to evaluate options to provide as much flexibility to our staff as possible so that they are able to balance work and family responsibilities. In March 2020, the Agency began a maximum telework policy and encouraged all eligible employees to telework. During the first two phases of the Agency's reopening, unless there is a compelling reason to be in the office, staff are encouraged to telework. Also, the Agency increased the work hours available and allowed for extended breaks during the day for those on flexible work schedules. While employees were expected to return to normal work schedules during Phase 2 of the reopening, the Agency decided to provide additional work schedule flexibility for those with continuing dependent care issues due to the pandemic, with telework also continuing to be an option for all employees. Our goal is to provide as much appropriate flexibility as possible so that EPA employees can adequately balance family and work responsibilities during the pandemic.

Once an Agency location enters Phase 3, as directed by the guidelines, it may resume staffing of its worksite. However, leave and telework flexibilities will remain available to all employees to support social distancing efforts for those reporting to the office. Most importantly, EPA will address the needs of employees in CDC-identified vulnerable populations or with continuing dependent care issues by allowing employees to self-certify their need to continue teleworking in Phase 3, ensuring the protection and privacy of our employees.

From the beginning of the COVID-19 pandemic and prior to the reopening of any facility, the Agency communicates each facilities' posture and current policies and procedures via global Agency "Mass Mailer" emails, intranet pages, memoranda, and virtual town halls. EPA employees have access to the Agency-

wide reopening plan on the Agency's intranet site, and local facilities' plans are provided by national program or regional managers within their local status update emails. Agency senior leadership have communicated directly and frequently with Agency employees throughout the pandemic. We have emphasized their appreciation to EPA staff for their continued work to protect human health and the environment during the COVID-19 pandemic, ensuring that the Agency is delivering the same quality of work to the American public. The Agency stands ready to work towards continuing to take actions to combat COVID-19 and maintain our focus on the Agency's mission to protect human health and the environment, to best serve the American people.

b. EPA's reopening plan does not provide adequate consideration for employees who use public transit to commute to EPA facilities for work. Encouraging people to enter into enclosed spaces with large groups of other people may result in increased transmission of the virus and could endanger public health. Will EPA allow employees who usually rely on public transportation to get to work the option of continued telework through phases 1 and 2?

<u>EPA Response</u>: As detailed in the response to question 26(a), throughout the pandemic, the Agency has acted in a deliberate and cautionary manner when making decisions on reopening Agency facilities. With communities recovering at different rates, location-specific conditions are driving the decisions to ensure people are reoccupying our offices in a way that is safe with the appropriate protective measures in place. The Agency is taking a transparent, data-driven, and deliberate approach to returning our workforce to Agency offices in a manner that ensures our employees' health and safety. This data-driven approach includes an evaluation of local conditions and state and local health orders to determine how best to initiate office reopenings. The Agency's reopening decisions start with data collected and presented by scientists in EPA's Office of Research and Development (ORD). These ORD scientists designed and developed a dashboard tool, accessible to all Agency employees, that presents at-a-glance views of the status of gating criteria. Specifically, the dashboard tool provides information on the status of this criteria in the commuting area surrounding each of EPA's 124 locations. The dashboard tool also presents maps, graphs, and statistical breakouts for facilities; and analyzes data from the CDC, the Johns Hopkins University Coronavirus Resource Center, and other sources to identify trends that can help inform reopening decisions.

While the dashboard is a highly specialized tool to assist with the Agency's reopening decisions, it is not the only information considered. EPA leadership reviews all information available, including evaluations of location conditions and state and local orders in conjunction with the EPA's dashboard tool to make decisions on reopening Agency facilities. A decision to enter into any phase is based on a combination of factors, including: (1) an objective assessment provided weekly by ORD scientific experts on the status of each gating criteria

in the commuting area surrounding our facility locations; (2) information on city, state and county reopening; (3) other local conditions; and (4) the Agency's commitment to provide a safe and healthy workplace.

In March 2020, the Agency began a maximum telework policy and encouraged all eligible employees to telework. During the first two phases of the Agency's reopening, unless there is a compelling reason to be in the office, staff are encouraged to telework. Also, the Agency increased the work hours available and allowed for extended breaks during the day for those on flexible work schedules. While employees were expected to return to normal work schedules during Phase 2 of the reopening, the Agency decided to provide additional work schedule flexibility for those with continuing dependent care issues due to the pandemic, with telework also continuing to be an option for all employees. Our goal is to provide as much appropriate flexibility as possible so that EPA employees can adequately balance family and work responsibilities during the pandemic.

The Agency has continued to evaluate options to provide as much flexibility to our staff as possible so that they are able to balance work and family responsibilities. The Agency stands ready to work towards continuing to take actions to combat COVID-19 and maintain our focus on the Agency's mission to protect human health and the environment, to best serve the American people.

c. For each day beginning May 27, 2020, please provide the data and 'gating' criteria used to make decisions related to re-opening the EPA regional offices around the country, along with copies of all instructions provided to the Regions regarding re-opening. Please additionally indicate the dates on which EPA provided such instructions and data to regional leaders, representatives of EPA's employee unions and facilities partners such as co-tenants or major contractors, along with any additional written materials you included in those communications.

<u>EPA Response</u>: As detailed in the response to questions 26(a) and (b), the Agency has continued to evaluate options to provide as much flexibility to our staff as possible so that they are able to balance work and family responsibilities.

Under the OMB guidance, federal agencies are encouraged to reopen in a phased approach. As such, EPA is reopening its facilities in four phases to ensure the health and safety of our employees. Phased approaches are widely accepted as a tool used to progress towards reopening as evidenced by the actions of municipalities, cities, and states across the country. For example, here in the nation's capital, EPA Headquarters' office move through the first two phases has, in many ways, mirrored the Government of the District of Columbia. D.C. entered its Phase 1 on May 29, 2020. At that time the local government reopened select facilities and services where social distancing and mask wearing were possible. On June 22, 2020, D.C. entered Phase 2, continuing apace towards what could be considered normal operations. In that phase, additional facilities

were permitted to open and gatherings of up to 50 people are allowed. Additionally, Maryland, entered its own Phase 2 on June 5, 2020, and entered its Phase 3 on September 4, 2020. Virginia also entered Phase 3 on July 1, 2020.

Given these developments and the data collected and analyzed in EPA's dashboard tool, the EPA Headquarters office entered into Phase 2 of our plan on August 4, 2020. Individual decisions informed by the data are made on a case by case basis for the Regions and other offices. In doing so, the Agency has not contravened state and local guidance nor ignored the data in making its reopening decisions, as some Members of Congress have claimed. Instead, the Agency has taken and will continue to take state and local guidance under advisement when weighing all available information, including data from EPA's dashboard tool.

For all EPA locations, the Agency is taking additional precautionary measures to ensure a safe and healthy return to facilities. To ensure that any potential virus is rendered inactive before entering Phase 1, and in accordance with the EPA/CDC joint *Guidance on Cleaning and Disinfecting*, the EPA has instituted a minimum seven-day closure period prior to a facility entering the first of three phases. After the 7-day period, each facility will be reassessed before it moves into Phase 1. EPA is following guidance on cleaning and disinfecting the office environment. After the current and prolonged closure of work spaces and facilities the Agency is ensuring that our buildings' water systems and devices are safe, adhering to the CDC's *Guidance for Building Water Systems* and EPA's *Guidance on Maintaining or Restoring Water Quality in Buildings with Low or No Use*. The Agency is also working with GSA to ensure that our buildings are properly maintained by following CDC's guidance on optimum engineering controls for the building ventilation systems.

The Agency has continued to evaluate options to provide as much flexibility to our staff as possible so that they are able to balance work and family responsibilities. In March 2020, the Agency began a maximum telework policy and encouraged all eligible employees to telework. During the first two phases of the Agency's reopening, unless there is a compelling reason to be in the office, staff are encouraged to telework. Also, the Agency increased the work hours available and allowed for extended breaks during the day for those on flexible work schedules. While employees were expected to return to normal work schedules during Phase 2 of the reopening, the Agency decided to provide additional work schedule flexibility for those with continuing dependent care issues due to the pandemic, with telework also continuing to be an option for all employees. Our goal is to provide as much appropriate flexibility as possible so that EPA employees can adequately balance family and work responsibilities during the pandemic.

Once an Agency location enters Phase 3, as directed by the guidelines, it may resume staffing of its worksite. However, leave and telework flexibilities will

remain available to all employees to support social distancing efforts for those reporting to the office. Most importantly, EPA will address the needs of employees in CDC-identified vulnerable populations or with continuing dependent care issues by allowing employees to self-certify their need to continue teleworking in Phase 3, ensuring the protection and privacy of our employees.

From the beginning of the COVID-19 pandemic and prior to the reopening of any facility, the Agency communicates each facilities' posture and current policies and procedures via global Agency "Mass Mailer" emails, intranet pages, memoranda, and virtual town halls. EPA employees have access to the Agency-wide reopening plan on the Agency's intranet site, and local facilities' plans are provided by national program or regional managers within their local status update emails. Agency senior leadership have communicated directly and frequently with Agency employees throughout the pandemic. We have emphasized their appreciation to EPA staff for their continued work to protect human health and the environment during the COVID-19 pandemic, ensuring that the Agency is delivering the same quality of work to the American public.

The Agency stands ready to work towards continuing to take actions to combat COVID-19 and maintain our focus on the Agency's mission to protect human health and the environment, to best serve the American people.

27. On April 29, 2020, I sent a letter to EPA about an EPA proposal to permanently relax air emissions monitoring requirements using COVID-19 as a pretext.[4] Specifically, EPA had tried to propose the relaxation of these requirements automatically whenever a national emergency was in place despite the fact that not all national emergencies involve contagious diseases that require social distancing (e.g., the 1979 Iran hostage crisis national emergency that remains in place today). EPA's proposal would have effectively made the air monitoring requirements' relaxation permanent but was wisely rejected in the interagency review process. On May 19, 2020 the President issued an "Executive Order on Regulatory Relief to Support Economic Recovery" that urges federal agencies to address the economic impacts of COVID-19 "by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery." [5]

    a. Please identify each rule, policy, guidance, enforcement response, or other action that EPA has made or intends to make i) permanent or ii) extend beyond the duration of the COVID-19 pandemic, and state what action will be taken, when, and whether you commit to providing at least 30 days public notice before the effective date of any such regulatory or enforcement relaxation.

    b. Please provide a description of, and all documents discussing, EPA's plans for implementing the May 19th "Executive Order on Regulatory Relief to Support Economic Recovery."

[4] https://www.epw.senate.gov/public/_cache/files/9/7/9704cdcc-e62b-4183-8a47-7d3adcd23ed4/326BC15EAD82DCA1179799CC2B03A49A.04-29-20-tc-cems-rule-letter-to-wheeler.pdf
[5] https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/

<u>EPA Response</u>: The response to the pandemic is evolving and as such, EPA has not made any final decisions. If and when any actions are extended and/or made permanent, the Agency would follow the appropriate rulemaking procedures. On June 9, 2020, the Acting Director of OMB issued a data call to the heads of executive departments and agencies regarding the implementation of Executive Order 13924. EPA provided information to the Office of Management and Budget that was responsive to the Executive Order.

28. Nationwide, residential wood heaters emit five times more particulate matter pollution than U.S. petroleum refineries, cement manufacturers, and pulp and paper plants combined. On February 3, 2015, EPA issued Clean Air Act New Source Performance Standards (NSPS) for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces, which set more stringent emissions requirements on wood heaters to be phased-in over five years. The first emissions standards, known as Step 1, went into effect on May 15, 2015. At the time of implementation, over 85% of the wood heaters on the market required to meet Step 1 met the emissions standards. More stringent emissions reductions, known as Step 2, were scheduled to go into effect five years later on May 15, 2020. After that date, manufacturers and retailers were no longer allowed to make or sell wood heaters that did not meet the Step 2 emissions requirements. In 2018, EPA proposed allowing retailers more time to sell Step 1 wood heaters, but in April 2020, rejected this proposal and decided to maintain the original Step 2 deadline. On May 8, 2020, I sent a letter asking EPA to respond to press reports that the agency was planning to reverse its April 2020 decision, and instead propose allowing retailers to sell wood heaters that failed to meet Step 2 requirements for an additional six months. This decision would lead to more harmful air pollution in the midst of a deadly respiratory pandemic and into the future.[6] I asked for you to respond to my letter by May 19, 2020 and as of June 3, 2020, I still have not received a response. On May 15, 2020, EPA issued a proposal to delay the deadline for retailers to sell Step 1 wood heaters through November 30, 2020.[7] Please answer and provide the following:

    a. In the hearing, you commented that Step 1 wood heaters were not "antiquated" and "meet the Obama 2015 standard." Isn't true that the "Obama 2015 standard" established Step 1 *and* Step 2 requirements and after May 15, 2020, any wood heaters that do not meet the Step 2 standards would not, in fact, be meeting the 2015 New Source Performance Standards (NSPS) for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces? And isn't true that for some wood heaters, Step 2 is the first emissions requirement?

    <u>EPA Response</u>: For woodstoves, pellet stoves, and hydronic heaters, the 2015 NSPS phased in emissions limits in two steps, with the first limits (Step 1 limits)

[6] https://www.epw.senate.gov/public/_cache/files/c/5/c50f80ad-397a-40bb-bd74-ad43face8b0e/EADF696BD1CE57852FFFE1089169AFC0.05-08-20-senator-carper-wood-stove-heater-letter-to-admin-wheeler.pdf

[7] https://www.epa.gov/sites/production/files/2020-05/documents/eo_12866_wood_heaters_nsps_2060-au87_proposed_amendments_may_15_2020.pdf

taking effect May 15, 2015, and the second limits (Step 2 limits) taking effect five years later (May 15, 2020). For wood-fired forced air furnaces (also called warm air furnaces), the 2015 NSPS required work practice standards beginning on the effective date of the rule. EPA phased in emissions limits for forced air furnaces in two steps between 2016/2017 and 2020, to give manufacturers the time they needed to develop cleaner models and conduct emissions testing. The 2015 NSPS (Step 1) represent the first such emission standards for hydronic heaters and warm air furnaces. According to the 2015 NSPS, all units sold after May 15, 2020, must meet the more stringent Step 2 standards. Hence, under the current rule, units certified to meet Step 1 standards may no longer be sold after May 15, 2020.

b. According to EPA, the Step 2 emissions standards for wood stoves would cut emissions rates by over half compared to the Step 1 standards.[8] Similar reductions are also found across the other wood heater technologies. Of the health benefits calculated for the 2015 New Source Performance Standards (NSPS) for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces, please quantify the amount of benefits that will be achieved by the implementation of Step 2 versus Step 1.

EPA Response: Based on information available at the time (e.g., projected sales of new appliances), the 2015 Regulatory Impact Analysis (RIA) estimated the emission reduction benefits associated with Step 1 and Step 2. For example, the RIA estimated that "the average of the annual $PM_{2.5}$ emission reductions between the year of rule promulgation (2015) and the year that the final rule is fully implemented (2020) is 8,269 tons, or nearly 8,300 tons, for the final rule.".

c. In the Regulatory Impact Analysis for EPA's 2018 proposal to allow retailers two additional years to sell Step 1 wood heaters, EPA estimated "the annual monetized fine particulate matter-related forgone health benefits of the proposed amendments, from 2019–2022, were $100 million to $230 million (2016 dollars)." These "large forgone net benefits" and the fact that retailers had plenty of time to meet the standard are the major reasons why EPA decided not to delay the standard in April 2020.[9] Has EPA calculated the estimated additional pollution and possible forgone health benefits of the May 15, 2020 wood heater proposal? If not, why not? If so, please provide the results of this analysis.

EPA Response: For reasons explained in the proposal preamble published in the *Federal Register* on May 22, 2020 (85 FR 31124), we did not estimated the additional pollution, possible forgone health benefits, and other impacts of this proposed action. We were requesting comments on what these potential impacts could be and will respond accordingly as part of our efforts to prepare the final action. We note that the proposed additional time to allow retailers to sell Step 1 devices, if finalized, would have ended on November 30, 2020, a much shorter

[8] https://www.epa.gov/burnwise/choosing-right-wood-burning-stove
[9] https://www.govinfo.gov/content/pkg/FR-2020-04-02/pdf/2020-05961.pdf

period compared to the length of the sell-through proposed in 2018 (two years) and shorter than the one-year sell through period proposed by Senator Carper on December 6, 2018, in a Committee markup of S. 1857.

Having taken account of the comments and other information received, however, EPA has decided not to pursue a "replacement sales period" as was proposed in May 2020. EPA recognizes the efforts of manufacturers to bring cleaner burning appliances to the marketplace. Currently, more than 240 wood heater models and more than 30 hydronic heater and forced-air furnace models made by more than 60 manufacturers have been certified by EPA to meet Step 2 emission limits in the NSPS.

d. Provide a statement about whether EPA would consider another extension beyond November 30, 2020, and whether it plans to allow the sale of Step 1 wood stoves indefinitely or permanently.

EPA Response: Given that the November 30, 2020 date is past, EPA is no longer planning to finalize any sell through period for the Step 1 wood heaters. As noted above, under the current rule, all units sold after May 15, 2020, must meet the more stringent Step 2 standards—units certified to meet Step 1 standards may no longer be sold after May 15, 2020.

e. Provide copies of all documents supporting, opposing, analyzing, or otherwise discussing, the above-noted wood heater rule, including, but not limited to, emails or other documents related to the decision to reverse the agency's April 2020 decision not to extend the prohibition on the sale of older and dirtier wood stove models, analyses of economic impacts, analysis of the long term air pollution effects and the legal basis for the extension.

EPA Response: The rationale supporting the proposal can be found in the preamble to the proposed rule (*see* 85 FR 31124) and regulatory docket (docket ID: EPA-HQ-OAR-2018-0195). However, as noted above, EPA has decided not to pursue a "replacement sales period" as was proposed in May 2020.

f. A robust explanation of what changed since EPA determined in April 2020 that an extension was not warranted and why a six month extension -- and not a shorter time period -- is needed at this time. This is especially true given that even in the proposal EPA admits COVID only impacted sales in the last 60 days. Yet EPA is allowing retailers to donate and receive a tax credit for any remaining, out of date heaters, even though according to testimony from the wood heater industry, retailers had to make plans to meet the 2020 standard in 2018 and 2019.[10] Please explain why EPA is allowing retailers to donate Step 1wood heaters to nonprofits that plan on distributing the out of date wood heaters to Tribal communities and other at-risk communities

[10] https://www.epw.senate.gov/public/_cache/files/b/6/b6e0f779-2204-4586-ade2-b6bdcaea7341/B767516456C2FFCAF391126CFB88BF66.williams-testimony-11.14.2017.pdf

after the compliance deadlines. In the explanation, please provide any health analysis that was conducted by EPA before making this decision.

<u>EPA Response</u>: As explained in the May 22, 2020 proposed rule preamble, the proposed amendments would have taken effect upon promulgation, if it had been finalized as proposed. EPA has not finalized the proposed amendments and does not intend to do so.

Concerning donations, consistent with the 2015 wood heater rule, transfer of ownership from a commercial owner to a non-profit organization may occur if it was initiated and completed before May 15, 2020. The actual physical delivery of any heater to the non-profit organization may occur after that. While the Agency did not conduct a specific health analysis on tribal communities prior to the donation approval, we are aware that many tribal homes use old, inefficient, and dirty burning stoves for heating and cooking. These outdated stoves may also release wood smoke that is harmful to the health of residents, especially the young and the old. A donation program of Step 1 heaters would benefit tribal communities with improved ambient and indoor air quality.

g. Because the May 15, 2020 proposed wood heater rule is not yet final, it provides interim relief by stating that "EPA will treat the sale of Step 1 devices as a low enforcement priority." Although this is not a firm commitment not to enforce the May 15 wood stove deadline, it is effectively the same. Prior "low enforcement priority" statements by EPA have been very rare but always have been conditioned upon meeting certain conditions designed to assure environmentally responsible behavior, and implicitly held out the specter of enforcing if such conditions were not met or for very bad actors. The wood heater statement of low enforcement priority imposes no such conditions. EPA's sole justification is also economic, i.e., "to mitigate the impact of the ongoing COVID-19 pandemic on retailers who have lost valuable sales opportunities." When does EPA's low enforcement priority for Step 1 wood heater sales end? If not upon issuance of a final rule, why not?

<u>EPA Response</u>: As cited in the proposed rule preamble, during the period between May 15, 2020, and any publication of EPA's final action on this proposal, EPA would treat the sale of Step 1 devices as a low enforcement priority. As EPA no longer plans to issue a final rule, EPA is also terminating the "low enforcement priority" statement as of November 30, 2020.

Under the current rule, all units sold after May 15, 2020, must meet the more stringent Step 2 standards—units certified to meet Step 1 standards may no longer be sold after May 15, 2020.

h. Are there any circumstances in which EPA will consider initiating enforcement action against an entity that sells Step 1 wood heaters? If so, what are they?

EPA Response: While the sale of Step 1 devices after May 15, 2020 currently is a violation, it was a low priority for EPA to pursue an enforcement response to that violation while EPA was considering an extension of the sell-through period. As EPA is no longer considering that extension, EPA also is terminating the "low enforcement priority" statement.

Under the current rule, all units sold after May 15, 2020, must meet the more stringent Step 2 standards—units certified to meet Step 1 standards may no longer be sold after May 15, 2020.

i. Please explain why EPA's low enforcement priority policy statement that is included in the proposed rule is not in effect a final rule.

EPA Response: EPA's statement had no legal effect, because it did not alter the existing legal requirements of the current regulations. Further, the statement was not binding on EPA, states, the regulated community, or the public. It simply provided interested persons with some notice of how the Agency intends to focus its enforcement resources during the time that it was in effect (i.e., while it was undertaking an action to revise the current regulations).

j. Please explain why the proposed rule's efforts to provide financial assistance to the wood stove industry in the absence of any efforts to justify it on the basis of environmental impacts does not impermissibly usurp Congress' role in funding COVID-relief.

EPA Response: The proposed rule does not attempt to provide any funding or financial assistance to the wood stove industry. As stated in the preamble to the proposed rule, EPA was proposing to provide time for retailers to sell Step 1 devices to ensure they get the full benefit of the 5 year ''lead time'' on which the Step 2 standards were based by replacing the time period for sales opportunities that were lost due to COVID–19. But, as noted above, EPA has decided not to pursue a "replacement sales period" as was proposed in May 2020.

29. On May 19, 2020, EPA signed a proposed rule[11] that would establish procedures and requirements for how EPA will manage the issuance of guidance documents subject to the requirements of Executive Order 13891 issued on October 9, 2019.[12] These procedures would chill and politicize the guidance development process. Among other things, the rule would require that, "Before issuing a new guidance document covered by this rule that is developed by an EPA Regional Office, the EPA is proposing that the EPA Regional Office must receive concurrence from the corresponding Presidentially-appointed EPA official (i.e., the relevant Assistant Administrator or an official who is serving in the acting capacity) at EPA headquarters who is responsible for administering the national program to which the guidance document pertains." Moreover, any guidance documents deemed "significant" under the rule could not be issued, absent exigent circumstances, without first providing

[11] https://insideepa.com/sites/insideepa.com/files/documents/2020/may/epa2020_0862.pdf
[12] https://www.govinfo.gov/content/pkg/FR-2019-10-15/pdf/2019-22623.pdf

notice and an opportunity for 30 days of public comment, and the public would gain a new right to petition EPA for modification or withdrawal of existing guidance documents.

a. Please list all guidance documents issued since January 21, 2017 that would meet the proposed rule's definition of "significant" requiring advance public notice and opportunity for comment.

EPA Response: The EPA Guidance Rule draws its definition of "significant" from Executive Orders 12866 and 13891. *See* 40 CFR 2.503. Agency guidance that has already been issued and meets that definition of significant would be listed at reginfo.gov. Such guidance would have undergone interagency review as required by Executive Orders 12866 and 13891.

b. Please list all guidance documents issued since 2008 in which a Presidentially-appointed EPA official has concurred, and provide the total number of documents since that time in which such officials have and have not concurred.

EPA Response: An active guidance document within the meaning of Executive Order 13891 is posted on the EPA Guidance Portal (https://www.epa.gov/guidance). Guidance issued by EPA offices led by a Presidentially-appointed official already has concurrence from that official.

c. Identify all guidance documents issued since 2008 for which parties have petitioned EPA or a court pursuant to the Administrative Procedure Act or otherwise to have EPA modify or withdraw a guidance document and the results of each such petition.

EPA Response: The EPA Guidance Rule establishes a consistent process for the public to petition EPA to withdraw or modify active guidance documents and reinstate rescinded guidance documents. This is the first time EPA established such a process that sets clear expectations for the Agency and stakeholders.

30. I recently sent two oversight letters to EPA that also released hundreds of pages of internal EPA documents:

On May 18, 2020, I sent a letter to EPA's Inspector General describing how the Transportation Department repeatedly ignored EPA's input to the recently-finalized roll-back of the clean cars rule, how EPA improperly withheld significant documents from the rulemaking record, and how EPA was aware that the mistakes in the rule left it extremely vulnerable to legal challenge.[13]

On April 17, 2020, I sent a letter to you which described how Dr. Nancy Beck, a White House official who has been nominated to lead the Consumer Product Safety Commission, over-ruled EPA career and political officials and weakened a proposed rule to limit the use of

[13] https://www.epw.senate.gov/public/_cache/files/9/2/9225bb67-dff1-4711-aebe-2eea6fc7da76/649E0C532863CA79917CDE2593A14C62.02-26-20tctoepaigcarssecretscience.pdf

PFAS in consumer products.[14] This Committee's PFAS package that was enacted into law in last year's defense bill includes a provision that requires the proposed PFAS rule that Dr. Beck delayed and sought to weaken to be finalized by June 22, 2020.

In a recent hearing, you told Congresswoman Watson Coleman, in response to her question about an earlier letter I wrote on the clean cars rule rollback, that "Nobody's going to be retaliated at all for--for any issues that they bring forward," further stating "No, absolutely not" when the Congresswoman reiterated "And no one's going to be retaliated against because they disagree.".

a. Please indicate whether you will continue to ensure that no efforts are made to identify or retaliate against any individual who may have provided internal information or documents to my office.

EPA Response: No one will be retaliated against. Agency employees should be mindful and respectful of whistleblower protections afforded by law.

b. Please describe the manner in which you plan to personally engage and ensure not only that the Significant New Use Rule is finalized by the date the law requires, and that it reflects EPA's views that the weakening changes sought by Dr. Beck are not included.

EPA Response: On Monday June 22, 2020, I signed the final Significant New Use Rule. Thereby EPA met the deadline set forth in the FY 2020 National Defense Authorization Act (NDAA). While EPA acknowledges that it was no small feat to complete this rule in the very expedited timeframe required by the NDAA, I fully supported EPA staff in the Office of Chemical Safety and Pollution Prevention (OCSPP) in their efforts and made it clear that meeting the aggressive deadline was a priority. Input from our federal partners during interagency review is a required aspect of the regulatory development process that improves the scientific quality of our work. EPA always works diligently to address any comments or concerns raised during interagency review. We urge you to review the final rule provisions in order to assuage any concerns you may have regarding the provisions that were included.

31. For more than two years, EPA has promised to propose to designate PFOA and PFOS as hazardous substances under the Superfund law, which will help communities clean up contamination and recover costs from those responsible. Is it accurate that EPA's proposal to designate PFOA and PFOS as hazardous substances under the Superfund law has been completed for many months, but that the White House Office of Management and Budget has told you not to submit it? If not, please provide a specific date by which this proposal will be submitted for interagency review.

[14] https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=BB799C4E-FCEB-447F-BB13-2E73CD58539D

<u>EPA Response</u>: EPA has initiated the regulatory process for designating PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

32. In my Questions for the Record for Mr. Benevento following his nomination hearing on March 11, 2020, I noted that throughout the Trump Administration, EPA has failed to provide adequate responses to dozens of requests for information and documents from myself and other Democratic Senators. I asked him to provide complete responses to the following letters, which are a sub-set of the outstanding requests made of the Agency, and again renew my request for full and complete responses to these requests:

    a. October 9, 2018: Letter on litigation costs, signed by Senators Carper, Cardin, Sanders, Whitehouse, Merkley, Markey, Gillibrand, Booker, Duckworth, and Van Hollen.

    <u>EPA Response</u>: We look forward to continuing to work with your staff to provide any additional information as appropriate.

    b. November 15, 2018: Letter on the Clean Air Scientific Advisory Committee, signed by Senators Carper, Whitehouse, Markley, Hassan, Warren, Merkley, Gillibrand, Van Hollen, Wyden, Blumenthal, Harris, Booker, Shaheen, Hirono, Duckworth, and Schatz.

    <u>EPA Response</u>: We look forward to continuing to work with your staff to provide any additional information as appropriate.

    c. June 3, 2019: Letter on Section 401 of the Clean Water Act, signed by Senators Carper, Booker, and Duckworth.

    <u>EPA Response</u>: The Agency provided a comprehensive response on September 26, 2019. We look forward to continuing to work with your staff to provide any additional information as appropriate.

33. As part of Questions for the Record for Mr. Benevento, I asked EPA to provide any notes, record, emails, or other documents since January 20, 2017, between EPA political officials, including but not limited to yourself, Doug Benevento, and Matthew Leopold and outside parties, including but not limited to Bill Wehrum (or his former colleagues at Hunton Andrews Kurth) and Jeff Holmstead (or his colleagues at Bracewell), concerning the development or consideration of an EPA proposed rule, *Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals*,[15] that some observers say would diminish the independence of the Environmental Appeals Board and politicize the administrative appeals process. EPA responded that, "As documents responsive to your request are identified, we will provide information as appropriate to you on a rolling basis as they become available" but EPA has provided no

[15] https://www.govinfo.gov/content/pkg/FR-2019-12-03/pdf/2019-24940.pdf

documents, and failed to state whether any exist or that EPA even conducted a search for such documents.

Please provide the documents requested. If none exist, please confirm that and describe fully the persons, offices, and locations searched and methods used to try and locate such documents.

EPA Response: On July 22, 2020, I signed a final procedural rule that streamlines and modernizes the Agency's permit appeal process and ensures that appeals are decided consistent with the authority delegated from the Administrator by modifying existing procedural requirements and realigning prior delegations. Although not subject to the notice and comment requirements of the Administrative Procedure Act, the Agency nonetheless voluntarily sought comment because we believe that the information and opinions supplied by the public would inform the Agency's views. Therefore, any comments received from external stakeholders about the proposed rule—such as you request—would be posted in the public docket, identified in Docket ID No. EPA-HQ-OGC-2019-0406, at *https://www.regulations.gov.*

34. In a November 2018 email to EPA employees, you wrote, "Throughout the history of the U.S. Environmental Protection Agency (EPA), Administrators have reaffirmed a commitment to transparency in our agency's operations." During this most recent decade, part of this commitment to transparency has included releasing records of the calendars of the agency's senior leaders. During their tenures, Administrators Gina McCarthy and Lisa Jackson regularly released details of their daily schedules. After taking office, you continued this practice, although with less frequency and detail than your predecessors included. However, this practice appears to have further changed starting on November 22, 2019. Starting on that day, the calendar entries that you have shared with the public are exceedingly vague and contain very few meaningful details that would enable the public to understand how you are conducting yourself in the leadership of the agency. The vast majority of calendar entries are simply listed as "Staff Briefing", with no information on the subject of the event or the major participants involved.

    This problem is also reflected in the calendars of other senior leaders at EPA. Associate Deputy Administrator Benevento's, Principal Deputy Assistant Administrator Anne Idsal's, Assistant Administrator Alexandra Dunn's, Acting Chief Financial Officer David Bloom's, Associate Administrator Joseph Brazauskas's, General Counsel Matthew Leopold's, Assistant Administrator Peter Wright's, and Associate Administrator Brittany Bolen's public calendars all suffer from the same lack of transparency. Assistant Administrator Chad MacIntosh has not made any calendar entries available for public viewing since 2019. Similar issues exist for EPA regional leaders.

    Within EPA headquarters, Assistant Administrator Ross's public calendar are only modestly more transparent than the standard practice among EPA senior leaders, but still far from sufficient to inform the American public as to his activities. Only Assistant Administrator Bodine has posted public calendars that have any degree of useful detail.

In order to conduct meaningful oversight of EPA, I request that you share your and all other senior EPA leaders' full detailed calendar records from November 22, 2019 until the present. Also, I request that you provide daily detailed information related to all the entries on your calendars that are released on the EPA website and insist the other EPA senior leaders do likewise.

EPA Response: Soon after becoming the EPA's Acting Administrator on August 2, 2018, I sent a message to all EPA employees reaffirming past EPA Administrator's commitments to transparency in our Agency's operations. Since 1983 when Administrator Ruckelshaus first issued a memorandum about contacts with persons outside the EPA, these memoranda have become known as the "fishbowl memos" because they have stressed that the Agency should operate openly and transparently for all to see, as if they were in a fishbowl. In that memo, I shared that I had already directed that a copy of my appointment calendar be provided to the Office of Public Affairs and made available to the public on the EPA website. I also had already directed that senior officials, including the Deputy Administrator, Assistant Administrators, Associate Administrators, and Regional Administrators make their appointment calendars available to the public in a similar manner. Those directions and my commitment that the Agency operate openly and transparently for all to see remain unchanged. Please feel free to reach out to my staff in the Office of Congressional and Intergovernmental Relations to address any questions you may have about viewing our publicly posted calendars.

35. On May 14, 2020, the Department of Justice lodged a proposed consent decree in the *DTE Energy Company and Detroit Edison* Clean Air Act civil judicial case alleging major modifications of several air pollution-emitting power plants.[16] Although the decree "resolves a claim and releases Defendants from any liability" for its Monroe Unit 2 facility, it states that "none of the relief in this Consent Decree is attributable to the United States' Monroe Unit 2 2010 claim" because of "the specific circumstances of this case" and in reliance on a policy memorandum issued by former Administrator Scott Pruitt on December 7, 2017. The 2017 memorandum[17] reversed EPA's longstanding position that it can use its own projections for calculating potential future air emissions, and instead defers to companies to assess whether they believe New Source Review (NSR) rules apply. Notably, the decree is not signed by the Director of EPA's Air Enforcement Division (AED) as is customary, and EPA's Co-Plaintiff in the case (the Sierra Club) signed a separate Consent Decree with DTE on May 22, 2020,[18] which EPA and the Department of Justice (DOJ) reportedly refused to sign because it contains provisions committing to the retirement of several old and inefficient DTE coal plants.

    a. Please explain why the Director of EPA's Air Enforcement Division (AED) did not sign the Consent Decree lodged on May 14, 2020, and provide all documents discussing or otherwise related to his signature or decision to withhold it, and identify

[16] https://www.justice.gov/enrd/consent-decree/file/1276421/download
[17] https://www.epa.gov/sites/production/files/2017-12/documents/nsr_policy_memo.12.7.17.pdf
[18] https://insideepa.com/sites/insideepa.com/files/documents/2020/may/epa2020_0899a.pdf

all other Clean Air Act judicial consent decrees since January 21, 2017, in which EPA Headquarters but not the AED Director signed the settlement.

EPA Response: The Administrator's authority to enter into settlements is delegated to the Assistant Administrator for OECA. That authority remains with the Assistant Administrator for OECA and for Clean Air Act cases it is also redelegated to Agency officials, including the Air Enforcement Director. The Introduction to the Agency's Delegations manual states that "[d]elegated or redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically delegated or redelegated." Thus, the Assistant Administrator for OECA retained the authority to sign the DTE Consent Decree and did so on behalf of the Agency.

b. Provide all documents discussing the injunctive relief that EPA or DOJ considered, proposed, rejected, and adopted in the DTE case identified above, Civil Action No. 2:10-cv-13101-BAF-RSW (E.D. Mich.).

EPA Response: The documents discussing the injunctive relief that EPA or DOJ considered, proposed, or rejected are pre-decisional, deliberative, attorney work product, protected by the attorney-client privilege, or was the subject of confidential settlement discussions. The Agency does not release such information in order to preserve privileges and to facilitate productive negotiations. The injunctive relief that EPA and DOJ agreed to is in the final lodged Consent Decree, which the court approved and entered on July 23, 2020.

36. Please describe how EPA has utilized the groundwater monitoring data at coal ash disposal sites that has been made available since 2017 to characterize the extent of groundwater contamination at these sites. Please provide copies of all documents that describe EPA's analysis of this information. Please also describe how this analysis further informed EPA's efforts to regulate or engage in enforcement actions related to coal ash disposal. If no such analysis was conducted, why not?

EPA Response: The groundwater monitoring requirements at 40 CFR 257.90 through 257.98 are in effect and include requirements for owners and operators of coal combustion residuals (CCR) units to conduct groundwater monitoring, publicly post the results, and take action to remedy groundwater that exceeds groundwater protection standards. EPA regularly reviews the documents posted on facilities' publicly accessible CCR websites, in accordance with § 257.107. The annual groundwater monitoring and corrective action reports inform EPA on the status of groundwater monitoring at CCR disposal units, and if remediation is necessary, the progress that the facility is making on those efforts. EPA Headquarters shares this information with EPA regional offices, and Headquarters and the Regions share this information with the appropriate state environmental agencies to ensure regulatory deadlines are met including corrective action and closure.

37. Please describe the steps has EPA taken to update the 2014 risk assessment[19] for coal ash that utilizes the 2017 industry data described above. If no such steps have been taken, why not?

EPA Response: EPA has not updated the 2014 Risk Assessment to incorporate newer information, such as groundwater monitoring data collected around CCR landfills and surface impoundments. The purpose of the 2014 risk assessment was to estimate potential risks to human health and the environment from CCR disposal, in particular, in the absence of uniform federal regulations. The 2014 risk assessment, along with damage cases and other information, provided the record support for EPA to promulgate new requirements, including groundwater monitoring and corrective action designed to mitigate the identified risks. An updated risk assessment is not presently needed for EPA and the states to ensure that groundwater contamination is addressed.

38. Please describe all actions EPA has taken to ensure that the closure of coal ash storage ponds and any corrective measure assessments comply with EPA's Coal Combustion Residuals (CCR) rule.

EPA Response: As originally promulgated, the CCR rule was self-implementing, was not federally enforceable and did not provide for state program approval. With the enactment of the Water Infrastructure Improvements for the Nation Act in December 2016, the Resource Conservation and Recovery Act (RCRA) statute was amended to allow federal investigation and enforcement as well as state program approval. Since that time, the Agency has been working to put in place the necessary foundational pieces for an enforcement program. These efforts included developing and delivering CCR rule training courses for EPA headquarters and regional employees and state agency employees; establishing two national CCR workgroups that meet regularly to ensure nationally-consistent rule implementation and to establish legally-sound policies and processes for compliance monitoring under the CCR rule, and preparing and mailing of compliance-focused letters to all CCR facilities to provide additional notice of the CCR rule and numerous requirements contained within it.

The Agency has also undertaken a review of all CCR facility publicly accessible websites (as required by the CCR rule) to monitor compliance with key internet posting requirements (including closure plans) and is in the process of engaging with numerous facilities where compliance issues have been detected. As described in the response to question #36, the Agency has also undertaken review of groundwater documentation prepared by facilities as part of the corrective action requirements, and is in the process of analyzing and, where necessary, taking action where potential compliance issues have been detected. The Agency has also begun engaging with several facilities on compliance issues separately from the efforts described above (*e.g.*, to resolve complex regulatory compliance issues such as integrating unit closure work with corrective action efforts). Lastly, the Agency has been working extensively with individual states to establish or revise their regulatory programs in preparation of the state's submittal for

[19] EPA, Human and Ecological Risk Assessment of Coal Combustion Residuals, EPA-HQ-OLEM-2019-0173-0008 (Dec. 2014)

program approval to operate in lieu of the federal program. As part of this effort, the Agency has been working with the states to ensure that the state programs include requirements as protective as the federal program and that the states have authority to enforce the requirements, including those that relate to closure and corrective action.

39. Please describe all actions EPA has taken to provide oversight, assistance and/or enforcement on Indian Lands to ensure compliance with the requirements of the CCR rule.

EPA Response: There are currently three facilities regulated by the CCR rule that are located in Indian country. These are: (1) Navajo Generating Station in Coconino County, Arizona, (2) Bonanza Power Plant in Uintah County, Utah, and (3) Four Corners Power Plant in San Juan County, New Mexico. EPA proposed a rule in February 2020 to establish a federal CCR permit program, which would directly implement the CCR rule in Indian country.

EPA has conducted outreach on the federal CCR Permit program proposal to tribes and tribal coordinators through a variety of ways. EPA met with established tribal partnership groups including the National Tribal Caucus and Tribal Waste and Response Steering Committee to discuss the proposed rule. In April 2020, EPA sent notification emails to leaders of all federally recognized Indian tribes. Courtesy emails were also sent to tribal environmental directors. EPA held an informational tribal webinar on the proposal in May 2020. EPA conducted a coordination call with the Ute Indian Tribe in June 2020 and conducted tribal consultation with the Navajo Nation in June 2020 to discuss the proposal and provide a meaningful opportunity for tribal input to EPA's proposed rule. In response to a request from the Navajo Nation, EPA extended the public comment period on the proposed rule for an additional 60 days through July 19, 2020.

40. For each of Fiscal Years (FYs) 2017, 2018, 2019 and 2020, please provide: a) EPA's budget for enforcement of the CCR rule, b) how many full time employees (FTEs) were tasked with enforcing it, c) the number of site inspections that were conducted at coal ash disposal sites.

EPA Response: EPA does not track budget or FTE numbers specifically for enforcing the CCR rule. Within EPA's Office of Enforcement and Compliance Assurance and the regional offices, numerous employees across different divisions are responsible for implementation of the CCR Rule.

Since the passage of the Water Infrastructure Improvements for the Nation Act, which gave the Agency authority to investigate and enforce the requirements of the CCR rule, the Agency has been working to establish a framework for an enforcement program as detailed in the response to Question 38. As part of the work to prepare for site inspections, the Agency is working to ensure that those who will conduct inspections have the proper credentialing as well as the necessary CCR rule-specific training. The Agency is also reviewing RCRAInfo, the database of record for RCRA activities, to ensure it could be used to manage CCR compliance monitoring records. Since the CCR rule was promulgated, the Agency has conducted or participated in numerous site visits

to CCR facilities, and before the Agency's entire inspection program was shut down due to COVID-19 issues, several site inspections were in the planning stages.

41. When does EPA plan to establish protections for coal ash legacy surface impoundments in response to the August 2018 order of the D.C. Court of Appeals to do so?

EPA Response: On October 14, 2020, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) for Disposal of Coal Combustion Residuals from Electric Utilities for legacy CCR surface impoundments in the *Federal Register* seeking comment and data on inactive surface impoundments at inactive electric utilities.

42. Please describe the steps EPA taken to a) identify the universe of coal ash legacy surface impoundments, b) identify the former and current owners of coal ash legacy surface impoundments, and c) assess the environmental and human health threat posed by coal ash legacy surface impoundments.

EPA Response: EPA has engaged the Regions and states, industry and the Department of Energy (DOE) on the universe of coal ash legacy surface impoundments. Approximately ten states have told EPA that they have estimated a total of 37 possible legacy CCR surface impoundments within their states (collectively). The Utility Solid Waste Activities Group surveyed their members and determined that 45 CCR units could possibly be legacy CCR surface impoundments. EPA has also coordinated with DOE to obtain information on the universe of U.S. power plants. DOE shared data showing approximately 140 facilities that have been reported to have one or more coal-fired boilers that retired or have gone out of service between January 1993 and October 2015. Some of these facilities may have legacy units. Moreover, the ANPRM will seek additional information from the public and other stakeholders on the universe of legacy surface impoundments and the owners and operators of them.

Once EPA identifies units that meet the definition of a legacy CCR surface impoundment, EPA can revisit and then assess the environmental and human health threat posed by these units.

43. Executive Order 12898 requires that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands." EPA admitted in its latest CCR rollback (Part B) that the impacts of the proposed rule "are generally expected to increase the risk of releases of CCR into the environment, and therefore reduce the human health and environmental benefits of the 2015 CCR Rule."[20] EPA further admitted that "because the

[20] EPA, [Draft] Regulatory Impact Analysis: EPA's 2019 RCRA Proposed Rule, Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure, Docket ID No. EPA-HQ- OLEM-2019-0173-0021, at 4-1 (Dec. 2019, rev. Feb. 2020)

2015 CCR Rule demographic screening assessment determined that coal-fired power plants tend to be located in areas characterized by low-income populations, *the likely increased disposal of CCR on site at coal-fired power plants under this rule may have a disproportionate impact on those populations*."[21] Please specifically describe the actions EPA has taken to comply with EO 12898 to address the risks to low-income populations it identified.

EPA Response: The inclusion of the statement that the impacts of the CCR Part B proposed rule "are generally expected to increase the risk of releases of CCR into the environment, and therefore reduce the human health and environmental benefits of the 2015 CCR Rule" resulted from an inadvertent drafting error in one of the rulemaking's support documents. While the statement should have been removed prior to its submission to OMB, this drafting oversight was identified and corrected while under review at OMB. This statement is not included in the support document released with the proposed rule published on March 3, 2020. EPA notes that Section 4.2 of this same document presents the human health and environmental impacts of the CCR Part B proposed rule. There, EPA states its belief that CCR units "closed consistent with these proposed requirements…under a closure plan approved by the Administrator or Participating State Director would meet the RCRA section 4004(a) protectiveness standard."

44. EPA's "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis"[22] requires EPA to consider the following three questions to determine potential environmental justice impacts for all regulatory actions:

> "Are there potential environmental justice concerns associated with environmental stressors affected by the regulatory action for population groups of concern in the baseline?"
>
> "Are there potential environmental justice concerns associated with environmental stressors affected by the regulatory action for population groups of concern for the regulatory option(s) under consideration?"
> "For each regulatory option under consideration, are potential environmental justice concerns created or mitigated compared to the baseline?"

Please describe how EPA has addressed each of these questions for the CCR Rollbacks proposed in 2018-2020.

EPA Response: This Administration has made measurable progress advancing environmental justice. Environmental justice considerations are integrated on the front

[21] EPA, Regulatory Impact Analysis (RIA): EPA's 2019 RCRA Proposed Rule Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure, Docket ID No. EPA-HQ-OLEM-2019-0173-0020 (Feb. 2020) at 5-3, emphasis added.
[22] EPA, Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (June 2016), https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf

end of EPA's decision-making process, which includes rulemakings. EPA's rule writers must address the elements of Executive Order 12898 (*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*) in the "Statutory and Executive Order Review" section of rule preambles, as well as throughout the rulemaking process. The Regulatory Impact Analysis (RIA) accompanying EPA's 2015 CCR rule examined the demographic profile of populations potentially affected by the disposal of CCR. The RIA considered as potentially affected those populations living within a one-mile radius of CCR disposal units (landfills and surface impoundments) as well as populations living within the catchment areas of surface impoundments. These populations are not mutually exclusive but are used to approximate populations affected by groundwater and surface water releases respectively.

The RIA compared the demographic characteristics of these potentially affected populations with the average characteristics of populations at the state and national level. It found that the concentration of low income and minority groups were roughly proportional, or slightly higher, within potentially affected populations when compared to the national and to state averages. Based on the RIA, EPA concluded that low income and minority groups may face slightly higher risks from the disposal of CCR in the 2015 Rule baseline (*i.e.*, in the absence of the addition of new regulations establishing national minimum criteria for the management of CCR). The 2015 CCR rule was not anticipated to increase risks for potentially affected populations. Similarly, in subsequent CCR rulemakings EPA has carefully considered risk implications in its formulation of proposed revisions. Revisions to the 2015 CCR rule have also been designed to be risk reducing and EPA has gone to great lengths to explain the basis and reasoning for its decisions in the accompanying preambles. For this reason, the subsequent CCR rules are not expected to create environmental justice concerns relative to the baseline.

45. On April 12, 2019, the U.S. Court of Appeals for the Fifth Circuit issued a decision in *Southwestern Electric Power Co. v. EPA*, 920 F.3d 999 (5th Cir. 2019), holding that EPA must set new "best available technology economically achievable" (BAT) limits for power plant legacy wastewater and leachate. Does EPA plan to rely on the continued use of surface impoundments as a 'technology', and if so, why, in light of the fact that some power plants are using or testing wastewater treatment technologies such as thermal or membrane-based systems to treat scrubber wastewater which are far more effective?

<u>EPA Response</u>: The Agency is currently still evaluating how to best address the remand in *Southwestern Elec. Power Co. v. EPA* with respect to the limitations for leachate and legacy wastewater.

46. The Environmental Law and Policy Center found a reduction in Clean Water Act enforcement activities in EPA's Region 5, much like other analysis has demonstrated nationwide.

    a. Please describe EPA's plans to increase enforcement staffing levels nationwide.

EPA Response: EPA has been managing staffing levels to ensure it is able to meet its goals and objectives and advance its mission. Regional and national program offices are currently working to onboard new hires to meet the FTE ceilings submitted to Congress as part of the FY 2020 operating plan.

b. For each of EPA's regional offices, please state the percent of EPA regional staff that are dedicated to enforcement efforts.

EPA Response:

Region	FY 2020 Enacted TOTAL Regional FTE Ceiling	FY 2020 Enacted Regional ECA* FTE Ceiling	% of FTE Supporting Enforcement & Compliance Assurance Activities
Region 1	540.8	121.9	22.5%
Region 2	723.7	199.3	27.5%
Region 3	719.6	203.7	28.3%
Region 4	865.1	244.4	28.3%
Region 5	994.6	310.8	31.2%
Region 6	682.7	186.0	27.2%
Region 7	455.5	120.2	26.4%
Region 8	486.1	106.0	21.8%
Region 9	664.5	173.6	26.1%
Region 10	485.5	107.2	22.1%
TOTAL:	**6,618.1**	**1,773.1**	**26.8%**

*Enforcement and Compliance Assurance (ECA)

c. For each of EPA's regional offices and for each of the last three FYs, please state the percent of EPA's enforcement and compliance monitoring spending that was spent in the region.

EPA Response: In thousands (see next page):

	FY 2017			FY 2018			FY 2019			FY 2020		
	Enacted	Obligations	% Used	Enacted	Obligations	% Used	Enacted	Obligations	% Used	Enacted	Obligations	% Used
Region 1	$25,577	$23,513	91.9%	$24,072	$23,323	96.9%	$24,219	$24,306	100.4%	$24,827	$24,105	97.1%
Region 2	$38,808	$39,059	100.6%	$40,095	$38,758	96.7%	$37,950	$39,333	103.6%	$38,430	$37,506	97.6%
Region 3	$38,236	$37,422	97.9%	$37,438	$35,951	96.0%	$36,946	$33,771	91.4%	$37,710	$35,995	95.5%
Region 4	$46,826	$47,120	100.6%	$47,355	$45,993	97.1%	$43,465	$43,401	99.9%	$45,896	$44,036	95.9%
Region 5	$56,222	$54,441	96.8%	$54,615	$53,032	97.1%	$54,327	$51,671	95.1%	$57,716	$54,238	94.0%
Region 6	$36,376	$35,258	96.9%	$34,417	$34,345	99.8%	$34,477	$33,635	97.6%	$34,144	$33,616	98.5%
Region 7	$21,543	$20,553	95.4%	$20,673	$20,494	99.1%	$21,228	$21,291	100.3%	$21,783	$23,364	107.3%
Region 8	$20,729	$20,065	96.8%	$20,428	$19,956	97.7%	$20,338	$20,066	98.7%	$21,895	$21,227	96.9%
Region 9	$35,070	$34,638	98.8%	$34,104	$33,598	98.5%	$32,874	$32,791	99.7%	$36,848	$34,534	93.7%
Region 10	$20,453	$19,647	96.1%	$19,998	$20,717	103.6%	$20,203	$20,149	99.7%	$20,310	$20,206	99.5%
TOTAL:	**$339,840**	**$331,716**	**97.6%**	**$333,195**	**$326,167**	**97.9%**	**$326,027**	**$320,414**	**98.3%**	**$339,559**	**$328,827**	**96.8%**

***Notes:** 1) Dollars include both payroll and non-pay funding.
2) The table compares the beginning of the year enacted budget with the total amount of New Obligation Authority (NOA) obligated.
3) Obligations do not include carryover or Special Account funds. However, NOA funds reprogrammed to the region during the year are included if obligated. Therefore, in some cases, a region may have spent more funding than provided in the enacted budget.

47. In response to a question that Senator Merkley asked, you stated "When a chemical under the TSCA review process is already being regulated under a different program, we decided early on in setting out the parameters for the TSCA risk evaluations that we would not double regulate that in order to focus the time on the areas of the chemicals that are unregulated at this point."

Section 9(b) of TSCA states, in part:

> "If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this Act."

A decision to regulate a chemical under more than one environmental statute, which the above excerpt contemplates, is not the same as a decision not to bother to determine whether the chemical poses an unreasonable risk under the known and reasonably foreseeable conditions of use of that chemical in the risk evaluation. Please provide the legal justification for EPA's decision to exclude uses, the risks from which could in theory be addressed under other environmental statutes, from even being part of the risk evaluation in the first place.

<u>EPA Response</u>: EPA believes it is both reasonable and prudent to tailor TSCA Risk Evaluations when other EPA offices have expertise and experience to address specific environmental media, rather than attempt to evaluate and regulate potential exposures and risks from those media under TSCA. EPA believes that coordinated action on

exposure pathways and risks addressed by other EPA-administered statutes and regulatory programs is consistent with statutory text and legislative history, and also furthers EPA's intent to efficiently use Agency resources, avoid duplicating efforts taken pursuant to other Agency programs, and meet the statutory deadline for completing risk evaluations. EPA is therefore tailoring the scope of the Risk Evaluations using authorities in TSCA sections 6(b) and 9(b)(1).

48. EPA recently has lost or is litigating several lawsuits concerning its failure to comply with the Clean Air Act (CAA) Section 110 "good neighbor" requirement to protect downwind northeastern states from air pollution. This includes an October 2019 ruling from the U.S. Court of Appeals for the D.C. Circuit, in which the court sided with New York and five other northeastern states and vacated EPA's December 2018 final rule that did not require 20 upwind states to take any further steps to reduce ozone pollution that drifts into downwind states.[23] Several northeastern states are currently suing EPA for failing to produce plans to reduce ozone, NOx, and smog from upwind states.[24] Describe in detail EPA's plans and timelines for complying with the court decisions and properly implement the CAA 110 good neighbor provisions to protect downwind states.

EPA Response: EPA is working diligently to respond to the remand of the Cross-State Air Pollution Rule (CSAPR) Update in *Wisconsin v. EPA*, 983 F.3d 303 (D.C. Cir. 2019). EPA proposed the Revised CSAPR Update on October 30, 2020 to fully resolve the affected states' remaining good neighbor obligations for the 2008 ozone NAAQS. EPA is on schedule to meet its court-ordered deadline of March 15, 2021 for final signature. More details can be found in the proposal, which was published in the Federal Register at 85 FR 68964 (October 30, 2020).

49. I continue to hear complaints from industry stakeholders that EPA is not processing advanced biofuel applications or petitions for new advanced biofuel pathways for the Renewable Fuel Standard (RFS) in a timely manner. In some instances, companies have been waiting four or more years for a decision from EPA. Please identify how EPA plans to address the backlog of applications and petitions within the RFS.

EPA Response: Several of the pending registration applications and new pathway petitions involve complex technical and/or regulatory issues, which can take significant time to resolve. To ensure the ongoing effectiveness and integrity of the Renewable Fuel Standard (RFS) program, EPA is carefully considering the options for addressing these types of petitions and applications.

At the same time, however, EPA continues to make progress on the approval of new fuel pathway petitions. In 2020, EPA approved seven new petitions, including three for advanced biofuel pathways (one cellulosic pathway and two biomass-based diesel

[23] https://www.law.nyu.edu/sites/default/files/dc-cir-csapr-decision.pdf
[24] https://www.law.nyu.edu/centers/state-impact/issues/clean-air/clean-air-act-and-upwind-pollution

pathways).[25] In addition, as part of the final rule titled "Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes," published on February 6, 2020, we added new advanced biofuel pathways to the "lookup table" in the RFS regulations under which any eligible company can register. These new pathways include naphtha produced from corn and grain sorghum oil (Row I in Table 1 to 40 CFR 80.1426), and co-processed cellulosic diesel, jet fuel and heating oil produced from a number of cellulosic feedstocks (Row M in Table 1 to 40 CFR 80.1426).

EPA has taken steps in the past to improve the pathways applications process and to make decisions on a timely basis, and we continue to look for ways to improve the process.

50. On April 14, 2020 EPA proposed not to develop newer, more protective standards for particulate matter (PM) pollution and instead continue to implement the current National Ambient Air Quality Standards (NAAQS) for PM. This was despite EPA career recommendations to tighten the standard and the fact that a stronger standard could save up to 12,200 lives.[26] This decision makes even less sense given what Americans are now facing a respiratory pandemic whose effects are likely exacerbated by particulate air pollution. Please answer the following:

    a. This proposal was made after EPA eliminated a special PM Review Panel within the Clean Air Scientific Advisory Committee (CASAC), which was intended to help EPA review the PM science and PM NAAQS. Will you reinstitute the PM CASAC panel to help review the latest science before making a final decision, especially in light of the possible links between PM and COVID ? If not, why not?

        <u>EPA Response</u>: The best available science must be the foundation upon which all the EPA's regulatory and policy decisions are based. Independent reviews, such as the CASAC's reviews during the NAAQS standard-setting process, ensure that the Agency uses the best available science to fulfill our mission to protect human health and the environment. It is important to remember that the Clean Air Act envisions a continual NAAQS review. As soon as one five-year review ends, the next five-year review begins. The Agency is committed to constantly reviewing the latest science for each NAAQS review.

        To help ensure that the EPA complies with the statutory five-year requirement, I directed staff to create a pool of expert consultants that the seven-person chartered CASAC, through the Chair, can draw from as needed to support the particulate matter (PM) and ozone reviews. Relying on these consultants, instead of the previous panel arrangement, will help align the Agency's work with the Clean Air Act's five-year review schedule, while also ensuring that the standards are based on the best available science.

[25] The pathway assessment completed on July 20, 2020, approved two separate petitions from Renewable Energy Group, Inc. for biodiesel produced from cottonseed oil at two separate facilities (https://www.epa.gov/renewable-fuel-standard-program/renewable-energy-group-approval).
[26] https://www.washingtonpost.com/health/2020/04/14/epa-pollution-coronavirus/

b. In the Clean Air Scientific Advisory Committee's review of the PM Integrated Science Assessment for the proposed PM NAAQS, CASAC noted that it "does not provide a sufficiently comprehensive, systematic assessment of the available science relevant to understanding the health impacts of exposure to PM, due largely to a lack of a comprehensive, systematic review of relevant scientific literature; inadequate evidence and rationale for altered causal determinations; and a need for clearer discussion of causality and causal biological mechanisms and pathways.[27] What more is EPA doing to address the gaps identified by CASAC?

EPA Response: In developing the Integrated Science Assessment for Particulate Matter (PM ISA), EPA carefully considered CASAC and public comments on the draft ISA. EPA addressed CASAC's quoted concerns in the Final PM ISA (2019) , which states that the EPA: "(1) added text to the Preface and developed a new Appendix to more clearly articulate the process of ISA development; (2) revised the causality determination for long-term UFP exposure and nervous system effects to *suggestive of, but not sufficient to infer, a causal relationship*; and (3) added additional text to the Preface (section P.3.2.1) as well as text in the health effects chapters to clarify the discussion of biological plausibility and its role in forming causality determinations. Additionally, the U.S. EPA focused on addressing those comments that contributed to improving clarity, could be addressed in the near-term, and identified errors in the draft PM ISA." The full text is publicly available on EPA's website (https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=347534).

EPA continues to explore ways to further improve the process of ISA development. This includes identifying new and innovative approaches that could further expand upon systematic review techniques currently used in ISAs. Such approaches were recommended by CASAC and will be applied in future ISAs. Additionally, the Agency is in the process of initiating engagement with the National Academies of Sciences, Engineering, and Medicine to develop a project to recommend approaches for assessing causality from a multidisciplinary evidence base.

c. The COVID pandemic is having a devastating effect on impoverished and disadvantaged communities, communities of color and indigenous communities and the long-term health effects are unknown. Will you commit before finalizing the rule to consider the new respiratory and health stresses that may be exacerbated by PM pollution for our most vulnerable populations?

EPA Response: The Clean Air Act establishes that primary National Ambient Air Quality Standards (NAAQS) are set to allow an adequate margin of safety and are requisite to protect the public health and to protect the most sensitive populations. Section V.K of the notice of proposed rulemaking for review of the

[27]https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthCASAC/E2F6C71737201612852584D20069DFB1/$File/EPA-CASAC-20-001.pdf

particulate matter (PM) NAAQS details Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income populations and/or indigenous peoples. As further detailed in section II of the proposal, EPA expressly considered the available information regarding health effects among at-risk populations in reaching the proposed decision that the existing standard is requisite. Additionally, in reviewing and responding to public comments on the proposed rule, EPA considered comments regarding vulnerable populations and health effects in developing the final rulemaking.

51. Now that you have had plenty of time to read and be briefed on the 2018 National Climate Assessment, do you still question the conclusions of the Fourth National Climate Assessment that concludes our nation's economy is at risk if we do not take climate actions? If so, please specifically describe what you disagree with and why.

EPA Response: In collaboration with other federal agencies of the U.S. Global Change Research Program, EPA continues to evaluate scientifically rigorous scenarios and data products for future assessment reports, including the Fifth National Climate Assessment. The IPCC is in the process of adding several mid-range emission scenarios between the lower RCP4.5 and the higher RCP8.5 to their suite of modeling scenarios. EPA continues to believe that, in order to inform sound policy decisions, evaluating climate change risks under a range of modeling scenarios is appropriate.

We acknowledge the potential implications that climate change has for a strong economy and that, accordingly, our policy decisions should be informed by robust and transparent scientific processes. EPA continues to participate in the U.S. Global Change Research Program, including the evaluation of scientifically rigorous scenarios and data products for future assessment reports, including the Fifth National Climate Assessment.

52. What specifically is EPA doing to help U.S. communities become more resilient in the face of a growing climate and more frequent and extreme weather?

EPA Response: EPA has developed several tools to help communities anticipate, plan for, and adapt to the changing climate. For instance, EPA's Adaptation Resource Center (ARC-X) is a resource to help local governments effectively deliver services to their communities even as the climate changes. For more information about ARC-X and other tools please see the Agency's website (https://www.epa.gov/arc-x/tools-climate-change-adaptation).

EPA, through a Memorandum of Agreement (MOA) with Federal Emergency Management Agency (FEMA), collaborates to help communities hit by disasters rebuild in ways that protect the environment, create long-term economic prosperity, and enhance neighborhoods. Most notably in 2019 EPA's Office of Community Revitalization developed a Regional Resilience toolkit. The Regional Resilience toolkit is

designed for non-governmental partners and community groups to engage in a more inclusive process so that resilience actions are guided by core community values. Additional information regarding the EPA-FEMA MOA and the Regional Resilience toolkit is publicly available on the Agency's website (https://www.epa.gov/smartgrowth/smart-growth-strategies-disaster-resilience-and-recovery#epa-fema and https://www.epa.gov/smartgrowth/regional-resilience-toolkit).

Senator Cardin:

53. According to language included in the FY2020 Further Consolidated Appropriations Act (P.L. 116-94), EPA may not proceed with the next round of Water Infrastructure Finance and Innovation Act (WIFIA) funding until an agreement is reached between Office of Management and Budget (OMB), Department of the Treasury, and Congressional Budget Office (CBO) about budget scoring for the WIFIA program. WIFIA, a highly cost-efficient federal loan program able to leverage up to $97 for every $1 appropriated, has issued 21 loans totaling $4.4 billion in credit assistance to help finance $9.8 billion in water infrastructure projects and create 19,000 jobs. Can you provide assurances that the final agreement will be consistent with this Committee's intent in S. 3591, America's Water Infrastructure Act of 2020? The budget approaches approved unanimously in S. 3591 are in line with other federal credit programs, including the longstanding Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

    EPA Response: On June 30, 2020, EPA, the Office of Management and Budget (OMB), and Department of the Treasury published screening criteria in the *Federal Register* in accordance with P.L. 116-94 (https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13889.pdf). A detailed explanation of the screening criteria is contained in the *Federal Register* notice.

54. Do you agree that the plain meaning of the above-mentioned appropriations provision concerning budget scoring does not empower EPA, nor OMB, Treasury, or CBO, to make substantive changes to the WIFIA program, including project eligibility criteria?

    EPA Response: EPA agrees that the provision required the Executive Branch to develop budgetary scoring criteria that reflected existing federal appropriations laws to ensure consistent application of those laws to future WIFIA financing rounds. On June 30, 2020, EPA, OMB, and Treasury published screening criteria in the *Federal Register* in accordance with P.L. 116-94 (https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13889.pdf). A detailed explanation of the screening criteria is contained in the *Federal Register* notice.

Senator Sanders:

Vermont

55. On May 7th, the EPA announced that the Green Mountain Economic Development Corporation and the Southern Windsor County Regional Planning Commission had been selected to receive $500,000 and $300,000, respectively, in grants to assess and clean up contaminated properties under the agency's Brownfields program.

    a. When does the EPA expect to deliver this grant funding to these organizations? Does the EPA anticipate any delays in administering these funds?

    EPA Response: EPA is working with all selected recipients included in the FY20 Brownfields Grants announcement. The Southern Windsor County Assessment Grant was awarded on July 16, 2020. The Green Mountain Economic Development Corporation Cleanup Grant was awarded on August 10, 2020. EPA's Region 1 Brownfields Team experienced no delays during the award process for either of these grants.

    b. Please describe the EPA's plan, including a timeline, for providing ongoing support and technical assistance to these organizations, as well as the other 153 grant recipients that were included in the May 7th funding announcement.

    EPA Response: EPA brownfields grants are awarded as cooperative agreements to the successful applicants. Section II.C of the published guidelines provides a description of EPA's anticipated substantial involvement with these projects.[28] Every EPA brownfield cooperative agreement is assigned an EPA project officer to provide necessary support and technical assistance to assist grant recipients with their projects. EPA New England (Region 1) Brownfields staff already provided new grantee training to these recipients and are currently working with the recipients on negotiating their workplans and finalizing their paperwork. Regional staff will also conduct kickoff meetings with each recipient later this year and provide technical support and guidance throughout the period of performance of the grant.

56. In 2016, the EPA established Total Maximum Daily Load (TMDL) standards to ensure that the EPA's Clean Water Act obligations are satisfied in regard to the clean-up of phosphorus in Lake Champlain. In my questions for the record to consider your nomination for EPA Administrator, I asked whether you had found the appropriations levels provided to the EPA by Congress to be sufficient for the Agency to meet its obligation to oversee the clean-up of Lake Champlain. You responded with the following statement:

    "The EPA is committed to working with the states of Vermont and New York on their implementation of the Lake Champlain TMDLs. Once Congress provides

[28] EPA FY2020 Assessment, Revolving Loan Fund, and Cleanup Grant Application Resources webpage: https://www.epa.gov/brownfields/fy-2020-assessment-revolving-loan-fund-and-cleanup-grant-application-resources.

appropriations, the EPA will continue to perform the agency's oversight responsibilities."

Given that this statement did not answer my question, please provide a yes or no answer to the following question: Have you found the appropriations levels provided to the EPA by Congress to be sufficient to ensure that the EPA's Clean Water Act obligations are satisfied in regard to phosphorus levels in Lake Champlain? If so, please provide a timeline for when the EPA will fulfil its obligations under the TMDL. If not, please describe the funding amounts and specific areas for which congressional appropriations have been insufficient to fulfil the EPA's Clean Water Act obligations, as well as your plan for requesting sufficient funds in the EPA's FY 2022 budget request.

EPA Response: EPA has continued to perform the Agency's oversight responsibilities under existing appropriations and would continue to do so under the President's FY 2021 budget request. For example, on June 25, 2020, EPA sent a letter[29] to the Vermont Department of Environmental Conservation that detailed the steps Vermont has taken towards implementing the Lake Champlain Phosphorus TMDL for the Vermont stream segments that flow into Lake Champlain as well steps that the state still needs to take in order to restore the water quality in Lake Champlain.

Climate Change

57. According to a recent E&E News article, *How a Revised Calculation Could Hurt Future Climate Rules*, the EPA is in the process of finalizing a draft rule that would modify its methodology for calculating costs and benefits under the Clean Air Act. According to the article, experts widely expect this draft rule to minimize the co-benefits derived from reductions in harmful air pollutants, in effect reducing the EPA's reliance on protecting human health and the environment when formulating new regulations. This proposed rule's impacts are evident in the altered cost-benefit analysis the EPA used in its proposal to repeal the Clean Power Plan, which would drastically increase carbon and other emissions from power plants. The proposed rule could cause as many as 1,400 premature deaths, 48,000 new cases of asthma, and 21,000 new missed school days each year compared to the Clean Power Plan.

    Given that reducing the EPA's reliance on protecting human health and the environment when considering the benefits of new regulations clearly violates its mission to protect human health and the environment, as well as its statutory obligations under the Clean Air Act to protect and improve the nation's air quality, please provide a plan, including a timeline, for withdrawing the EPA's proposed rule to alter the EPA's cost-benefit methodology.

    EPA Response: The rule Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act (CAA) Rulemaking Process was proposed on June 4, 2020. EPA held a public hearing on July 1, 2020, and comments were due on

[29] https://www.epa.gov/sites/production/files/2020-06/documents/lake-champlain-tmdl-phase-1-milestones-ltr-6-25-20.pdf

August 3, 2020. After publishing the proposed rule, EPA received 24,740 public comment letters on the proposal, of which 143 provided detailed, substantive unique comments. Comments ranged from support for the proposal to opposition of this action. As detailed in the final rule's Response to Comment document, EPA instituted a number of updates to the final rule based on the comments it received. Consistent with the proposed rule, this final rule consists of three elements: it requires the EPA to prepare a benefit-cost analysis (BCA) for all future significant proposed and final regulations under the CAA; it requires EPA to develop the BCA using the best available scientific information and in accordance with best practices from the economic, engineering, physical, and biological sciences; and, it imposes additional procedural requirements to increase transparency in the presentation of the BCA results. This final rule also requires that the Agency consider the BCA in promulgating the regulation except where the statutory provision or provisions under which a significant regulation is promulgated prohibit it. Additional presentational requirements have been included in the final rule to increase transparency in future rulemakings.

The benefits and costs of a potential regulation, when permitted to be considered under the specific provision of the CAA under which a future regulation is promulgated, are of clear importance to decision-making and can provide justification for whether and how the EPA decides to regulate. However, the final rule does not specify how EPA will make regulatory decisions.

The final rule was published in the *Federal Register* on December 23, 2020. The final rule will ensure a consistent approach to the EPA's CAA benefit-cost analyses under the CAA and will provide transparency by requiring the generation of relevant information in all significant rulemakings. I encourage you to review the final rule.

58. On June 1st, the EPA finalized a rule that guts the Clean Water Act by restricting the ability of states and tribes to block federal energy projects, such as pipelines or industrial plants, which could pollute rivers and drinking water. In your statement announcing the rule, you stated that its intended purpose was to "curb abuses of the Clean Water Act that have held our nation's energy infrastructure projects hostage, and to put in place clear guidelines that finally give these projects a path forward."

    a. States like Washington have found that construction of fossil fuel infrastructure like coal export terminals would permanently destroy significant amounts of wetland, and that operation of this infrastructure would deposit fossil fuel pollution like coal dust in nearby surviving wetlands. As you may know, coal dust has a significant and negative impact on the ecological functions of wetlands.

        Do you consider decision by states to prevent the permanent destruction and environmental contamination of its ecological resources to be "abuses" of their authority under the Clean Water Act to ensure permitted activity will comply with applicable water standards?

b. Given that the goal of giving fossil fuel projects a path forward clearly runs counter to the EPA's mission to protect human health and the environment because it could cause unacceptably high levels of pollution, this final rule violates EPA's mission. Therefore, please provide your commitment to uphold the EPA's mission by ensuring the agency will not in any way narrow the scope of states' and tribes' ability to object to federal projects under Section 401 of the Clean Water Act.

EPA Response: EPA's final rule, published in the *Federal Register* on July 13, 2020, brings the Agency's regulations in line with the 1972 Amendments to the Clean Water Act (CWA). The final rule also increases the transparency and efficiency of the CWA section 401 certification process in order to promote the timely review of infrastructure projects while continuing to ensure that Americans have clean water for drinking and recreation. CWA section 401 envisions a robust state and tribal role in the federal licensing or permitting proceedings, including those in which local authority may otherwise be preempted by federal law. CWA section 401 gives states and authorized tribes authority to assess potential water quality impacts of discharges from federally permitted or licensed projects that may affect navigable waters within their borders. CWA section 401 also places important limitations on how that role may be implemented to maintain an efficient process, consistent with the overall cooperative federalism construct established by the CWA. Properly implemented, CWA section 401 is an important tool that can be used to help protect water quality while allowing federal permitting and licensing processes to proceed in a timely manner. EPA's prior regulations were nearly 50 years old and did not reflect the statutory language in CWA section 401. The final rule is consistent with the CWA and is intended to increase the predictability and timeliness of CWA section 401 certification actions by clarifying timeframes for certification, the scope of certification review and conditions, and related certification requirements and procedures.

59. During this hearing, you stated that the EPA's Safer Affordable Fuel-Efficient Vehicles (SAFE) rule to roll back automobile efficiency standards would "save more lives than not." However, according to the Union of Concerned Scientists, the new rule would lead to up to 1,444 more premature deaths, an additional 20,000 cases of exacerbated asthma, and hundreds of cardiovascular and respiratory illness-related hospitalizations. The increased air pollution from this rule will also put communities across the country at increased risk of death from respiratory diseases like COVID-19.

Given that the EPA's decision to roll back automobile efficiency standards will lead to more deaths than if the EPA had not rolled back these standards, would you like to amend your statement that the SAFE rule will save "more lives than not"? If you do not wish to amend your claim, please describe how over a thousand additional premature deaths represents more lives saved compared with this rule.

EPA Response: By reducing the average price of a new vehicle by about $1,000, the SAFE rule will make it easier for Americans to afford to buy newer, cleaner, and safer

vehicles. About 3,300 fewer crash fatalities, 397,000 fewer injuries, and more than 1.8 million fewer vehicles damaged in crashes are projected over the lifetimes of vehicles built according to these new standards. EPA also considered the impacts of the SAFE standards on air pollution and public health effects. This analysis is further discussed in the SAFE rule at 85 FR 25112, April 30, 2020.

60. On April 24, you tweeted that under President Trump, our "air, water, and land is cleaner." However, according to EPA's own air quality data, there were 15 percent more days with unhealthy air in our country over each of the past two years compared to 2013 through 2016, and a 2019 study posted in the National Bureau of Economic Research found that our country's fine particulate pollution increased by 5.5 percent between 2016 and 2018 after it declined by 24 percent between 2009 and 2016. Furthermore, the EPA's decision to roll back automobile emissions standards and Mercury and Air Toxics standards will lead to even more toxic pollution being spewed into our nation's air.

    Given that air pollution has demonstrably increased under President Trump, would you like to amend your claim that our nation's "air, water, and land" is cleaner under President Trump? If you do not wish to amend your claim, please describe how a 15 percent increase in days with unhealthy air and a 5.5 percent increase in fine particulate pollution represents cleaner air.

    <u>EPA Response</u>: On June 8, 2020, EPA released its annual report on air quality through 2019. This latest report shows continued progress. From 2017 to 2019, the combined emissions of criteria pollutants and their precursors dropped 7%. In the past three years (2017-2019), we saw the following drops in emissions of criteria and precursor pollutants:

    Nitrogen Oxides (NO_X) ↓10 %
    Particulate Matter 2.5 ($PM_{2.5}$) ↓1 %
    Sulfur Dioxide (SO_2) ↓ 16%
    Carbon monoxide (CO) ↓ 6%
    Volatile Organic Compounds (VOC) ↓ 3%

    And from 2017–2019, the number of days listed as unhealthy for sensitive groups in the Air Quality Index dropped by 34 percent as the amount of criteria pollutants in our air continued to fall:

    Carbon Monoxide 8-Hour ↓ 10%
    Lead (Pb) 3-Month Average ↓ 28%
    Nitrogen Dioxide Annual ↓ 4%
    Nitrogen Dioxide 1-Hour ↓ 2%
    Ozone 8-Hour ↓ 4%
    Particulate Matter 10 microns 24-Hour ↓ 22%
    Particulate Matter 2.5 microns Annual ↓ 7%
    Particulate Matter 2.5 microns 24-Hour ↓ 12%
    Sulfur Dioxide 1-Hour ↓ 10%

So, no, given the data, I see no reason to amend my previous statements detailing the clean air, water, and land we have seen under this Administration.

Air pollution concentrations in the outdoor air can vary year to year, influenced not only by pollution emissions but also by meteorology and natural events, such as dust storms or wildfires. Our air quality monitors pick up changes in air quality caused by both man-made emissions and natural events. As a whole, human-caused emissions of the six common air pollutants dropped in 2018. Despite this, air monitors in some areas showed increases in concentrations of ozone and particulate matter—the pollutants that account for the majority of unhealthy days in the outdoor air. Increases in particulate matter in some areas in 2018 were due, in part, to natural events such as wildfires. And weather conditions were generally more favorable to ozone formation in 2018. After adjusting for weather, there was a slight decrease in ozone concentrations from 2017 to 2018.

Toxics

61. On February 14, 2019, the EPA issued a PFAS Action plan that promised a regulatory determination on the establishment of a maximum contaminant level (MCL) for perfluroalkyl (PFAS) or polyfluoroalkyl (PFOA) substances in drinking water by the end of 2019. This past March, more than a year later, the EPA finally published a notice in the Federal Register announcing the EPA's intent to simply consider regulations for these toxic chemicals over the next five years. Meanwhile, the Environmental Working Group estimates that over 110 million Americans may be currently drinking water that contains toxic levels of PFAS or PFOA chemicals.

    a. Do you consider this contamination to be a public health crisis? If not, please describe how the presence of toxic chemicals in the drinking water of over a third of our country is not a public health crisis.

    <u>EPA Response</u>: EPA takes the issues surrounding per- and polyfluoroalkyl substances (PFAS) very seriously and the Agency has undertaken extensive efforts to address PFAS issues. PFAS-related issues are an important priority for EPA and we are working aggressively and cooperatively with our federal and state partners to take significant action in order to protect human health and the environment. In 2019, EPA issued the first-ever *PFAS Action Plan*—a historic step in our nation's efforts to address PFAS in the environment. As stated in EPA's *PFAS Action Plan*, "there is evidence that continued exposure above specific levels to certain PFAS may lead to adverse health effects."[30] The *PFAS Action Plan* also represented a number of important firsts for the Agency. It was the first time EPA has used all of its program offices to address an emerging chemical of concern. It was also the first time the Agency put together a multi-media, multi-program national research, management, and risk communication

[30] U.S. EPA, *PFAS Action Plan*, 1 (2019), https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf.

plan to respond to a challenge like PFAS. By prioritizing work on the *PFAS Action Plan*, EPA is delivering on President Trump's commitment to protect the health and well-being of communities across the country that are dealing with PFAS issues.

For close to two years, EPA has built on the momentum the *PFAS Action Plan* put in motion, and the Agency's efforts have been unprecedented. The Agency has made progress in all program areas—from groundwater cleanup guidance, to new test methods that are helping to move research efforts forward, to updates to the Toxics Release Inventory, to progress on carrying out Safe Drinking Water Act (SDWA) regulatory processes. These actions reflect the execution of the comprehensive and coordinated approach we outlined in the *PFAS Action Plan*, and updated in February 2020 through the *PFAS Action Plan: Program Update*.[31]

Additionally, since the release of the *PFAS Action Plan*, the Agency has worked extensively to ensure it is accurately and effectively communicating this progress to Congress and the public. Key progress and accomplishments include:

- **Technical Assistance and Support: Just as important as the progress on PFAS at the federal level are EPA efforts to form partnerships with states, tribes, and local communities across the country. Since releasing the *PFAS Action Plan*, EPA has provided assistance to more than 30 states to help address PFAS, and the Agency is continuing to build on this support. EPA has responded to requests for assistance from more than a dozen state and territorial governments by screening for PFAS at high priority sites and training local health agencies to test for PFAS on their own. EPA is also providing cleanup assistance to more than 30 states and the District of Columbia to address PFAS at contaminated groundwater and soil sites.**

- **Funding: As a leader in the nation's efforts to address PFAS in the environment, EPA recognizes that providing funding to external organizations is a critical component to successfully addressing these chemicals. Under this Administration, EPA's Office of Research and Development has awarded over $15 million through dozens of grants for PFAS research, including efforts to improve understanding of human and ecological exposure to PFAS, to assess and manage environmental risks posed by PFAS wastes, and to conduct research on PFAS in agriculture. States may use capitalization grant funds from EPA to address PFAS under the Drinking Water State Revolving Fund.**

- **Risk Communications and Community Engagement: Risk communication and engagement are critical for EPA to effectively support communities across the United States that are addressing PFAS. As outlined in the *PFAS***

***Action Plan*, EPA is actively working to enhance the way in which the Agency communicates about potential human health risks that may be associated with PFAS. EPA is working collaboratively to develop a risk communication toolbox that includes multimedia materials and messaging for federal, state, tribal, and local partners to use with the public. In 2020, EPA developed and launched a premier, scientifically-grounded risk communication training platform and trained over 100 EPA employees, including a training session focused specifically on PFAS issues. The 17.5 hour course covers governing principles from the science or risk communication, the science of science communication, and the process for risk communication at EPA.**

- **Research: EPA's goal under the *PFAS Action Plan* has been to develop and apply scientific information and tools to enable federal, state, local, and tribal governments to work together to make informed decisions to protect public health and the environment. Under the *PFAS Action Plan*, EPA has taken steps to prioritize PFAS research to develop additional analytical methods, to evaluate toxicity and health effects, and to understand impacts to agriculture and rural communities. EPA continues to compile and assess human and ecological toxicity information on PFAS to support risk management decisions. The Agency is also validating analytical methods for surface water, groundwater, wastewater, soils, sediments and biosolids; developing new methods to test for PFAS in air and emissions; and improving laboratory methods to discover unknown PFAS. EPA is also developing exposure models to understand how PFAS moves through the environment to impact people and ecosystems. EPA is working to develop tools to assist officials with the cleanup of contaminated sites, and in July 2020, EPA added new treatment information for removing PFAS from drinking water. The full extent of EPA's research supporting the PFAS Action Plan and various program initiatives can be found at https://www.epa.gov/chemical-research/research-and-polyfluoroalkyl-substances-pfas.**

- **Environmental Cleanup: EPA has made considerable progress under the *PFAS Action Plan* as it relates to cleanups. In December 2019, EPA issued the Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS under federal cleanup programs, a priority action under the *PFAS Action Plan*. EPA also continues moving forward with the regulatory process for proposing to designate PFOA and PFOS as hazardous substances under CERCLA, while developing analytical methods for environmental media and conducting treatment and disposal research. On December 18, 2020, EPA released for public comment the Interim Guidance on the Destroying and Disposing of PFAS and PFAS-Containing Materials. The interim guidance outlines the current state of the science on techniques and treatments that may be used to destroy or dispose of PFAS and PFAS-containing materials from non-consumer products, including aqueous film-forming foam (for firefighting). The interim guidance addresses PFAS in**

many forms as required by the National Defense Authorization Act for Fiscal Year 2020.

- **<u>Drinking Water</u>: EPA is following through on its commitment to evaluate and address PFAS in drinking water. The Agency's work includes efforts to expand drinking water test methods, to work under SDWA to propose maximum contaminate levels to regulate PFOA and PFOS, to produce new toxicity assessments, and to continue monitoring for PFAS.**

- **<u>Monitoring</u>: In July 2020, EPA transmitted the Unregulated Contaminant Monitoring Rule 5 (UCMR 5) proposal to OMB for interagency review. Per the America's Water Infrastructure Act of 2018 (AWIA) and National Defense Authorization Act for Fiscal Year 2020 amendments to SDWA, EPA anticipates proposing nationwide drinking water monitoring for PFAS that uses new methods that can detect PFAS at lower concentrations than previously possible.**

- **<u>Chemical Review and Disclosure</u>: EPA has taken significant actions under the Toxics Release Inventory (TRI) and the Toxic Substances Control Act (TSCA) program. Since releasing the *PFAS Action Plan*, the Agency has taken steps to update the Toxics Release Inventory program to include PFAS and to finalize a Significant New Use Rule (SNUR) for PFAS chemicals. In June 2020, EPA issued a final regulation that added a list of 172 PFAS chemicals to Toxics Release Inventory reporting. That same month, EPA issued a final regulation that can stop products containing certain PFAS from entering or reentering the marketplace without EPA's explicit permission.**

- **<u>Enforcement</u>: EPA continues to use enforcement tools, when appropriate, to address PFAS exposure in the environment and assist states in enforcement activities. EPA has already taken actions to address PFAS, including issuing SDWA orders and providing support to states. To date, across the nation, EPA has addressed PFAS in 15 cases using a variety of enforcement tools under SDWA, TSCA, RCRA, and CERCLA (where appropriate), and will continue to do so to protect public health and the environment.**

b. Given this level of likely contamination, a five year timespan for establishing an MCL for PFAS and PFOA chemicals is completely unacceptable to fulfil the EPA's mission of protecting human health and the environment. Please describe your plan for fulfilling the EPA's mission by drastically shortening the current five-year timespan for setting a robust MCL for the class of PFAS substances.

<u>EPA Response</u>: EPA is following the process Congress put in place under the Safe Drinking Water Act (SDWA) for the development of Maximum Contaminant Levels (MCLs). EPA must follow the requirements of both the SDWA and other applicable laws and is prohibited from prejudging the outcome

of a regulatory process. For EPA's regulatory decisions to be defensible, the Agency must comply with the laws established by Congress. The multistep process, established in the SDWA is designed to ensure public participation, transparency, and the use of the best-available peer reviewed science and other technical information. By adhering to the processes created by Congress, EPA will build a defensible record to defend Agency decisions if challenged in court.

62. Several states, including my home state of Vermont, have set health advisories for drinking water containing PFAS chemicals that are significantly more stringent than the EPA's lifetime health advisory level. The most recent update to the Toxic Substances Control Act (TSCA) contained a provision that protects states that had more stringent standards on the books before April 22, 2016 (15 USC 2617(e)(1)(A)).

In my questions for the record for the August 1, 2018 Senate Environment and Public Works Committee hearing "Examining EPA's Agenda: Protecting the Environment and Allowing America's Economy to Grow", I asked you whether you would commit to avoiding any actions to preempt states' ability to enforce health advisory levels for PFAS enacted before April 22, 2016 that are more stringent than the EPA's standards. You refused to make that commitment, and responded with the following statement:

> "The preemption provisions of the Lautenberg Amendments to TSCA contain important directions that address when state actions will be preempted or not. EPA will follow all requirements of the statute with regard to preemption."

Please describe the specific circumstances in which the preemption provisions of the Lautenberg Amendments to TSCA would lead the EPA to take actions that would preempt Vermont's ability to enforce health advisory levels for PFAS enacted before April 22, 2016 that are more stringent than the EPA's standards, and how the preemption provisions of the Lautenberg Amendments to TSCA would lead the EPA to preempt the state's health advisory levels for PFAS in those circumstances.

<u>EPA Response</u>: EPA does not believe that a state health advisory for drinking water contaminants would be subject to preemption under TSCA. TSCA section 18 describes the types of state actions that may be subject to preemption (*e.g.*, a state requirement to develop information, to prohibit or otherwise restrict behavior, or to require notification of a use) and the circumstances under which preemption might occur. A state health advisory that simply communicates information or non-regulatory general recommendations about a particular subject matter would not appear to fall under any of the provisions in section 18. Note, however, that some states might have other requirements associated with an advisory and those requirements might raise preemption issues. As a general matter, EPA does not adjudicate disputes as to whether particular state laws are subject to federal preemption and this response is not intended to resolve such disputes, or to otherwise establish the preemption status of a particular state law.

63. On May 29th, the EPA finalized a rule to regulate emissions of ethylene oxide, a toxic substance used in the production of industrial chemicals. Although this rule states that ethylene oxide poses an "unacceptable" public health threat, it would allow highly elevated risks of cancer to persist in communities across the country, in some cases as high as 200-in-1 million – twice as high as the EPA's presumptive benchmark for "acceptable" cancer risks. In order to justify this weak rule, the EPA used a risk factor for cancer five times weaker than EPA's own scientists recommended in a 2016 Integrated Risk Information System analysis of ethylene oxide.

    a. Why did the EPA choose to ignore its own scientists' cancer risk assessment, found in the 2016 Integrated Risk Information System analysis, when formulating this rule?

    EPA Response: Your question is based on a mistaken premise. The final rule is neither "weak," nor did we use a risk factor for cancer five times weaker than EPA's own scientists recommended in a 2016 Integrated Risk Information System (IRIS) analysis of ethylene oxide (EtO). To the contrary, for the risk assessment for the Clean Air Act's regulation the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Miscellaneous Organic Chemical Manufacturing ("the MON"), EPA used the 2016 IRIS unit risk estimate (URE) for ethylene oxide to calculate increased cancer risk. Based on revised actual emission estimates, for the final MON, the results of the risk assessment indicate that the increased cancer risk posed by the facilities could be as high as 400-in-1 million for one of the 194 facilities. After application of the controls required by this regulation, the cancer risk of 400-in-1 million would be reduced to 200-in-1 million.

    As the Agency noted in the preamble to the proposed rule, the modeled cancer risks from emissions of ethylene oxide are sensitive to the URE that is applied. Two key aspects of the 2016 URE for ethylene oxide potentially contribute to the conservative (*i.e.*, health protective) nature of the final 2016 URE: the upper-bound estimate and the dose-response model. EPA discusses those in the memorandum, Sensitivity of Ethylene Oxide Risk Estimates to Dose-Response Model Selection, available in the docket for the MON rulemaking. When uncertainties associated with use of the URE, which is an upper-bound estimate, and dose-response model selection are taken into account, they provide important context for interpreting risks that remain after emissions are controlled and indicate that the risks are acceptable. As a result, at all but one of the nearly 200 facilities covered by the rule, the maximum risk of cancer from a lifetime of exposure to ethylene oxide or other air toxics is expected to be lower than 1 in 10,000 (100 in 1 million), which is the level EPA generally uses in its risk reviews of air toxics rules to determine whether additional controls are necessary.

    b. Given the EPA's failure to properly consider established science, including the findings of its own scientists, as well as its statutory obligation under the Clean Air Act to protect and improve the nation's air quality, please describe your plan,

including a timeline, for withdrawing this rule and replacing it with one that truly protects our nation's communities from ethylene oxide.

<u>EPA Response</u>: Again, your question is based on a false premise, in that we did not "fail to properly consider established science." As I previously explained, in the Clean Air Act's regulation the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Miscellaneous Organic Chemical Manufacturing ("the MON"), EPA used the 2016 EPA Integrated Risk Information System (IRIS) Unit Risk Estimate (URE) for ethylene oxide to calculate increased cancer risk. EPA examines a broad base of health information when conducting a risk review of any NESHAP, including risk of cancer that may develop from a lifetime of exposure to a pollutant, the risk of non-cancer health effects, the associated uncertainties in risk estimates, and the inherent health-protective nature of our risk assessment methods. Therefore, there is no basis for our "withdrawing" this rule as you propose.

Further, you should be aware that the MON rulemaking is only one of the actions EPA is taking under its two-pronged strategy for addressing ethylene oxide. The Agency also is reviewing its NESHAP for ethylene oxide commercial sterilizers and anticipates issuing a proposal for public review and comment in 2021. In the second prong of its approach, EPA is providing support to its state air agency partners as they learn more about ethylene oxide emissions from facilities in areas identified by EPA's National Air Toxics Assessment (NATA) and identify opportunities for early reductions. As a result of this work, a number of facilities—including facilities in Colorado, Georgia, Illinois and Missouri—already have taken steps to reduce ethylene oxide emissions.

64. Last month, the EPA decided against continuing the work of the previous administration to ban the chemical perchlorate, which causes serious developmental disorders in children. In 2011, the EPA found that perchlorate poses serious health risks to up to 16 million people, and that high concentrations of this toxic substance are present in at least 26 states. Based on the EPA's mission to protect human health and the environment, please outline the EPA's plan, including a timeline, to establish robust regulations for perchlorate.

<u>EPA Response</u>: On July 21, 2020, EPA published a final action regarding the regulation of perchlorate under the Safe Drinking Water Act (SDWA). A detailed explanation of EPA's final action is available in the *Federal Register* notice at: https://www.govinfo.gov/content/pkg/FR-2020-07-21/pdf/2020-13462.pdf.

<u>Senator Whitehouse</u>

65. Please provide a list of anyone at EPA who met with or spoke to representatives of Marathon Petroleum, the dates of any such meetings or conversations, and the subjects discussed.

EPA Response: As I said in response to your questions at the hearing, I have not met with Marathon Petroleum—or any other oil company—about the Safer Affordable Fuel-Efficient (SAFE) Vehicles rule. I asked my staff to review my calendar for any meetings with Marathon and they reminded me that I had a phone call with Gary Heminger, then-CEO of Marathon Petroleum, on July 12, 2019. Members of my senior leadership team from the EPA's Office of Air and Radiation also participated in that phone call. The topic discussed on the call was the Renewable Fuel Standard (RFS) program. I reaffirm my previous answer that I have not met with any oil company to discuss the SAFE vehicle rule.

Any information supporting the development of the final SAFE rule, including any information presented to EPA or the National Highway Traffic Safety Administration (NHTSA) by external stakeholders and relied upon for the rule's development, is available to the public in the rulemaking docket, EPA–HQ–OAR–2018– 0283, available at www.regulations.gov.

66. In your testimony, you mentioned that you know one or more lobbyists for Marathon Petroleum and/or Marathon Oil and that one of them worked at your former law firm. Please identify the lobbyist at your former firm to whom you were referring, as well as any other lobbyists for Marathon Petroleum whom you know.

EPA Response: I take my ethical obligations seriously and believe the Agency should operate in an open and transparent manner. As I referenced in my response to you at the hearing, I had an ongoing ethics obligation to recuse myself from participating personally and substantially in certain matters in which I had a financial interest, or personal or business relationship for a period of two years from the time I rejoined the Agency as Deputy Administrator on April 20, 2018. As part of my obligations under Executive Order 13770, I was prohibited from participating in any particular matter involving specific parties in which my former employer, Faegre Baker Daniels LLP, or any former client to whom I provided legal or consultative services two years prior to April 20, 2018, for a period of two years—through April 20, 2020.

Please have your staff reach out to my staff in the EPA's Office of Congressional and Intergovernmental Relations if you would like any further information about my recusal statement, including my lists of former clients and former lobbying issues. We have already provided that information to Congress and would be happy to provide it to you as well.

67. Do you know a Marathon Petroleum lobbyist named Michael Birsic? If so, how?

EPA Response: I have not met with Marathon Petroleum—or any other oil company—to discuss the Safer Affordable Fuel-Efficient (SAFE) Vehicles rule.

68. Are you aware of any contacts between Marathon Petroleum and the U.S. Department of Justice, and in particular, the anti-trust division of DOJ? If so, please describe the nature of these contacts and which individuals were involved and what was discussed.

EPA Response: As I stated in my response to your question at the hearing, I am not aware of any such contacts.

69. Did anyone at EPA communicate with DOJ's anti-trust division on the subject of fuel economy and greenhouse gas emissions standards for cars and light trucks and/or DOJ's decision to investigate certain automakers' decision to negotiate standards with the state of California? If so, please list who was involved in such communications, when they occurred, and the nature of the conversation.

EPA Response: As I stated in my response to your question at the hearing, I am not aware of any such contacts.

70. What line of business is Marathon Petroleum in?

EPA Response: As EPA Administrator, I have met by phone with Marathon's then-CEO to discuss the EPA's RFS program on one occasion, on July 12, 2019. I understood their interest was based on being an oil company subject to RFS compliance obligations. I also understand that the company is subject to other EPA regulatory programs and has been the subject of compliance and enforcement actions, but I have not met with them on any topic other than the RFS.

71. Please provide a list of anyone at EPA who met with or spoke to representatives of Marathon Petroleum regarding litigation surrounding fuel economy and greenhouse gas emissions standards for cars and light trucks, the dates of any such conversations, and the nature of the conversation.

EPA Response: I have not met with Marathon Petroleum—or any other oil company—to talk about Safer Affordable Fuel-Efficient (SAFE) Vehicles rule.

72. You testified you were surprised that EPA's "secret" science rule is the brainchild of a few tobacco and fossil fuel industry lobbyists. Steve Milloy spent over two decades working for first the tobacco industry and then the fossil fuel industry lobbying to limit the use of science in rulemaking under the guise of enhancing transparency. Milloy used to work at Murray Energy when you lobbied for Murray Energy. Do you know Milloy? Did Milloy ever discuss with you his desire to limit the types of scientific studies that can be used in rulemaking? Did anyone at Murray Energy or any of your other former industry clients ever discuss this subject with you? If so, who?

EPA Response: As I stated in my response to the related questions during the hearing, I was not aware of a link between the issue of transparency in regulatory science and tobacco lobbying in the 1990's. The EPA's Strengthening Transparency in Regulatory Science rulemaking was first proposed before I rejoined the Agency on April 20, 2018 as Deputy Administrator. In response to the proposed rule, the Agency received close to a million comments, and after being briefed on the rule and the comments as Administrator, I directed EPA staff to issue a supplemental proposal to take additional

comments because I want to make sure that the Agency gets this rule right. I signed the supplemental notice on March 3, 2020, and we asked for the public to provide comments by April 18, 2020. In response to concerns raised by public health officials, members of Congress, and state officials—who, like EPA, have been focused on delivering our most critical public health missions while responding to the COVID-19 virus—I decided to extend the public comment period for an additional 30 days, through May 18, 2020.

Transparency in science that enables the independent validation of scientific conclusions is important to advancing the Agency's mission. In no way does the proposed rule or the supplemental notice suppress research or censor scientists. On the contrary, it acknowledges that all science is welcome at the Agency and provides a clear awareness to researchers and the general public that, if finalized, the Agency will utilize procedures with the goal of making the science on which future significant regulatory decisions are based more transparent while still ensuring the protection of confidential business information (CBI) and personally identifiable information (PII). The supplemental notice asked for public comment on all of these important considerations. We are in the process of developing the final rule and I expect it to be complete very soon.

73. Why is it in the public interest to pursue a proposal dreamt up and pushed by the tobacco and fossil fuel industries that would prevent EPA from considering some of the best available science on the relationship between air pollution and public health, including studies that specifically look at the relationship between air pollution and COVID-19?

    EPA Response: I respectfully disagree with any suggestion that the Agency's Strengthening Transparency in Regulatory Science rulemaking would impede the Agency's ability to respond to emergencies like COVID-19 using the best available data and scientific information. Our most important environmental statutes provide EPA with authority to issue emergency orders when necessary and respond to and address environmental emergencies to protect human health and the environment, and this rulemaking would not limit or impede EPA's authority to undertake such responses. For example, the Agency has created a fast-track process for handling requests to be added to our List N: Disinfectants for Use Against SARS-CoV-2 (List N). Through this process, we are reviewing most submissions within 14 days, as compared to the 90-day window these reviews typically take.

74. A draft report from EPA's Science Advisory Board said the "secret" science proposal could be viewed as a "license to politicize scientific evaluation." The final draft of the SAB's report stated, among other things, that "[m]oving forward with altered transparency requirements beyond those already in use, in the absence of such a robust analysis, risks serious and perverse outcomes." Do you think the exclusion of relevant, peer-reviewed scientific studies in the middle a pandemic could be considered a "serious and perverse outcome?"

    EPA Response: EPA received comments from SAB and the public on the proposed rulemaking pertaining to natural disasters and emergencies that cannot be replicated.

Transparency assumes no political ideology. The Agency will consider the SAB's comments along with those provided by the public in development of the final rule.

75. Will you commit that EPA's final "secret" science rule will not exclude from agency consideration any relevant, peer-reviewed studies examining the connection between air pollution and public health, including the "Six Cities" study and studies examining the connection between air pollution and increased human vulnerability to infectious diseases including COVID-19?

    EPA Response: EPA received many public comments on the proposed rulemaking pertaining to air pollution studies and separately on natural disasters and emergencies that cannot be replicated. The Agency will consider these comments in developing the final regulation.

76. In light of your stated interest in scientific transparency, why is EPA stonewalling the state of California's FOIA requests for the data, models, and other information the agency used in developing its rule on fuel economy and greenhouse gas emissions standards for cars and light trucks? Due to EPA's failure to respond to these requests, California has had to twice sue the agency in order to obtain this information. If data transparency is so important to you that you're attempting to promulgate a proposal against the advice of your own Science Advisory Board, why can't you provide California with the data and models and other information it's requesting?

    EPA Response: EPA has fully responded to California's FOIA request dated September 11, 2018, which sought documents relating to EPA's OMEGA model, as well as other models and data related to the SAFE Vehicles Rule. EPA provided California with all of the responsive, non-exempt information it sought, including the OMEGA model. EPA's withholdings were upheld by the U.S. District Court for the District of D.C.

    In regard to California's other pending lawsuit relating to its FOIA request dated December 10, 2019, it is EPA policy not to comment on matters in active litigation.

Senator Merkley:

77. Please provide a timeline for completion of the supplemental Risk Evaluation that will address legacy uses of asbestos.

    EPA Response: EPA intends to publish the draft scope for the supplemental Risk Evaluation on legacy uses and associated disposals of asbestos in the second quarter of 2021. The final risk evaluation for the conditions of use of asbestos represented in the already released draft risk evaluation will publish before the end of 2020.

78. Will EPA wait until the supplemental Risk Evaluation is completed to make the final risk determination or any risk management decisions for asbestos?

EPA Response: No, EPA will address any unreasonable risks identified in the asbestos risk evaluation that will be issued as final before the end of 2020.

79. You mentioned that a recently finalized Supplemental New Use Rule (SNUR) for asbestos will cover the forms of asbestos not evaluated in the Risk Evaluation. The SNUR will only address new uses of asbestos, so is not an acceptable way to deal with risks from other forms of asbestos that are already present in the environment. For example, Libby amphibole is estimated to contaminate the vermiculite insulations in 50 million homes in the U.S. This contaminated insulation poses a threat to workers and homeowners during building remodeling and demolition and when water and sewer lines rupture.

    a. How is EPA addressing risks from forms of asbestos other than chrysotile asbestos that are present in the environment?

    EPA Response: EPA is addressing the other forms of asbestos in a number of ways. First, EPA requires a review before any discontinued uses of asbestos can begin. On April 25, 2019, EPA finalized an Asbestos Significant New Use Rule (SNUR) under TSCA Section 5 that prohibits manufacture (including import) or processing of discontinued uses of asbestos from restarting without EPA evaluating each intended use for unreasonable risks to human health and the environment and to take any necessary regulatory action, which may include a prohibition. The asbestos currently being imported into the U.S. in raw form or in articles is chrysotile. The other five forms of asbestos (crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite (either in raw form or as part of articles)) are no longer manufactured, imported, or processed in the United States and are subject to the SNUR (40 CFR 721.11095). This SNUR kept all prior asbestos prohibitions in place, including the remaining partial ban from 1989.

    Second, in response to the court decision in *Safer Chemicals Healthy Families v. EPA*, Nos. 17-72260 et al. (9th Cir. 2019), EPA will issue a supplemental risk evaluation for public comment and peer review that will address legacy uses and associated disposals for chrysotile asbestos and the other five asbestos fiber types. If unreasonable risk is identified for any of the conditions of use from legacy uses and associated disposal for Chrysotile and the five other types of asbestos, EPA will take risk management action as needed.

    In addition, EPA has extensive regulations in place to address asbestos. Those regulations are listed on the EPA website (https://www.epa.gov/asbestos/asbestos-laws-and-regulations#regs). EPA also continues to provide guidance to the public on how to safely manage legacy asbestos by hiring trained and licensed asbestos professionals to properly inspect for, handle and dispose of asbestos. That guidance is available on the EPA asbestos website (https://www.epa.gov/asbestos/protect-your-family-exposures-

asbestos and https://www.epa.gov/asbestos/protect-your-family-asbestos-contaminated-vermiculite-insulation).

80. The TSCA revisions were designed to improve EPA's evaluation of the chemical risks to health and the environment. By spreading the asbestos risk evaluation across the primary risk evaluation, a supplemental risk evaluation, and only considering one form of asbestos out of six recognized asbestos fibers, the EPA has subverted the intent of the TSCA revisions and created a complicated evaluation of risks that will be challenging for the public to understand and the Agency to regulate.

    a. As required by statue, will EPA commit to creating a comprehensive risk evaluation that includes all uses, including those reasonably foreseen and legacy uses, for all substances under review?

    EPA Response: As described in the response to Question 79 above, EPA will issue a supplemental draft and final scope and a draft risk evaluation for public comment and peer review that will address legacy uses and associated disposals for chrysotile asbestos and the other five asbestos fiber types. If unreasonable risk is identified for any of the conditions of use from legacy uses and associated disposal for chrysotile and the five other types of asbestos, EPA will take risk management action as needed. Therefore, once completed, both the initial and the supplemental risk evaluation together will address the conditions of use of asbestos.

81. Please provide a list of other statutes regulating chemicals undergoing risk evaluations in the environment, water, and air, and please provide the references to the CFR for any limits or controls imposed by those statutes. In addition, please describe how those limits or controls meet the statutorily required safety standards in TSCA.

    a. Please address whether or not limits on the manufacturing of chemicals under TSCA could lead to less of that chemical showing up in the environment in drinking water, air, and soil.

    EPA Response: The attached excel sheet includes a list of other EPA-administered statutes addressing environmental releases and wastes from the chemicals undergoing Risk Evaluation.

    If a Condition of Use (COU) evaluated in a Risk Evaluation is found to present an unreasonable risk, EPA is required to implement risk management action to address that risk. The nature of the COU for which unreasonable use is identified, and the nature of the associated risk management action, would impact whether such risk management actions would result in less of the chemical being present in drinking water, air, or soil.

82. In response to Senator Duckworth's question about the status of the air monitoring network, you replied that you were not aware of any monitors that have been offline during the

pandemic. A review of the ambient and air toxics monitoring data suggests that there are in fact monitors that have been suspended during the pandemic. On the IMPROVE network monitoring website, the updates indicate that 27 of 160 IMPROVE monitors have been suspended at some point during the pandemic.

a. Please provide a list of all air monitors, including criteria pollutants monitors, National Air Toxics Trend Stations, NCORE Sites, and IMPROVE sites that have been suspended for any period of time during the pandemic.

EPA Response: See attached word document "Ambient Air Monitoring Status—COVID-19" and accompanying spreadsheet: "COVID 19 Site Shutdown List."

b. Please provide the location of the monitor, reason for the suspension, and duration of the time the monitor was offline.

EPA Response: See attached word document "Ambient Air Monitoring Status—COVID-19" and accompanying spreadsheet: "COVID 19 Site Shutdown List."

c. For monitors that continue to be offline, please provide an estimated date for when they will be fully operational.

EPA Response: We have no way to predict when operations will fully resume at monitoring sites across the nation; however, we continue to see declines in the percentages of monitors still suspended.

Senator Gillibrand:

83. Mr. Wheeler, I would like to ask you about the incineration of PFAS chemicals at the Norlite facility in Cohoes, New York which I briefly touched upon during the hearing before my time expired. In February, we learned that between 2018 and 2019, more than 2.4 million pounds of toxic firefighting foam was sent by the Department of Defense to Norlite to be destroyed by incineration. Local elected officials were not informed, no environmental impact statement was conducted and no test burn ever occurred. The City of Cohoes has adopted a new local law prohibiting the burning of firefighting foam containing PFAS for one year, but recent reporting has raised questions about whether DOD and Norlite are complying with that moratorium.

a. Is it typical practice to require a test burn prior to new waste streams being burned?

b. I understand that the EPA does not have methods in place to test burn AFFF, which, by definition is a fire suppressant. Is that true?

c. In the absence of those methods, how do we know whether it is safe for AFFF to be incinerated at this time?

EPA Response: The New York State Department of Environmental Conservation and the New York State Department of Health serve as the lead for this purpose. These agencies have already moved forward to undertake soil and water sampling proximate to the facility. EPA is working closely with state and local authorities, including New York State Department of Environmental Conservation, to address concerns about these chemicals and to provide technical and scientific support. EPA's Office of Research and Development (ORD) is currently considering multiple disposal techniques, including incineration, to effectively treat and dispose of PFAS wastes. Research on thermal stability of PFAS compounds, the ability to fully capture and identify PFAS compounds and their thermal decomposition byproducts, the potential for incomplete combustion, and the efficacy of emission control technologies are areas of targeted research. EPA stands ready to assist as may be requested in the future.

84. Last year's NDAA required EPA to develop interim guidance on the disposal and destruction of PFAS, including by incineration within a year after enactment.

    a. What is the status of the development of that guidance?

    b. Until the guidance is issued, is there anything EPA can do to get DOD to stop its policy of incineration and comply with the Cohoes moratorium?

    EPA Response: On December 18, 2020, EPA released for public comment the Interim Guidance on Destroying and Disposing of PFAS and PFAS-Containing Materials. The interim guidance outlines the current state of the science on techniques and treatments that may be used to destroy or dispose of PFAS and PFAS-containing materials from non-consumer products, including aqueous film-forming foam (for firefighting). The interim guidance addresses PFAS in many forms as required by the National Defense Authorization Act for Fiscal Year 2020.

85. The local community is very concerned about the lack of testing. Specifically, the City is requesting help from EPA to conduct soil and water testing in and around the facility. Can you commit to working with my office and with the City of Cohoes to get testing in place?

    EPA Response: The New York State Department of Environmental Conservation and the New York State Department of Health serve as the lead for this purpose. These agencies have already moved forward to undertake soil and water sampling proximate to the facility. EPA is working closely with state and local authorities, including New York State Department of Environmental Conservation, to address concerns about these chemicals and to provide technical and scientific support. EPA's Office of Research and Development (ORD) is currently considering multiple disposal techniques, including incineration, to effectively treat and dispose of PFAS wastes. Research on thermal stability of PFAS compounds, the ability to fully capture and identify PFAS compounds and their thermal decomposition byproducts, the potential

for incomplete combustion, and the efficacy of emission control technologies are areas of targeted research. EPA stands ready to assist as may be requested in the future.

86. Mr. Wheeler, as you know, current evidence from the Centers for Disease Control (CDC) suggests that COVID-19 spreads through person-to-person contact, and through respiratory droplets produced when an infected person coughs, sneezes or talks. In light of this pandemic that effects the respiratory system, the EPA needs to ensure that when states start re-opening schools, child care facilities, and offices around the country, the indoor air quality inside these facilities is safe to breathe and does not add to an already growing public health crisis. Twenty years of published research has shown that indoor environmental exposure to pollutants can be more intense than outdoor exposures and that school facilities have been neglected for decades. In fact, a 2017 American Society of Civil Engineers' report rated school infrastructure a D+. There is clearly a significant need to educate, train, and encourage schools and childcare facilities on child-safe and effective preventive management of facilities, which EPA has the current ability to do.

    a. In light of the pandemic, have you shifted any resources within the EPA into the Indoor Environments Division to expand its educational and training efforts on Indoor Air Quality nationwide? If not, why?

    <u>EPA Response</u>: To date, EPA has not made adjustments to the funding Congress appropriated for FY 2020 programs in EPA's Indoor Environments Division (IED). However, EPA's IED is actively participating in the Agency's response to the COVID-19 pandemic. IED is working closely with other EPA and CDC scientists to monitor and assess the emerging science on airborne transmission of SARS-CoV-2, including mitigation approaches, primarily focused on building engineering controls to improve ventilation and filtration. IED continues to translate that science into indoor air quality and COVID-19 guidance for the public, and to make it available on EPA's coronavirus website. IED delivered a series of technical assistance webinars, five of which were targeted specifically to the school's community and attended by nearly 10,000 school-based stakeholders. IED also provided technical support within the Agency to support EPA's reopening plans and operation of its facilities during the pandemic. While carrying out these indoor air COVID-19 activities, IED continues to use resources appropriated for reducing indoor air quality public health risks to address other high risk pollutants such as radon, asthma triggers, mold, and indoor particulate matter (PM) and through comprehensive indoor air quality interventions in homes, schools, and other commercial buildings.

87. Early evidence is emerging that, as was established with SARS, there may be a correlation between air pollution and COVID-19 mortality.

    a. Does the EPA consider long-term exposure to indoor air pollutants a risk factor that could contribute to more severe cases of COVID-19?

EPA Response: Chronic exposure to indoor air pollutants could result in damage to or impairment of the immune system, including dysregulation of antimicrobial and antiviral immunity. In that sense, chronic exposure to indoor air pollutants could theoretically contribute to a reduced or impaired immune response to SARS CoV-2, the virus that causes COVID-19. EPA is not currently aware of research on the specific connection between COVID-19 and other indoor air pollutants.

b. Has the EPA consulted with the CDC or any other relevant federal agency about the long-term health effects of exposure to indoor air pollutants as a potential risk factor for more severe cases of COVID-19? If not, do you plan to?

EPA Response: EPA has been collaborating with CDC on the federal COVID-19 response, including on indoor air issues. The long-term exposure to indoor air pollutants and COVID-19 has not been specifically discussed to date, but EPA stands ready to participate in any federal collaboration and coordination on this issue.

c. Given that poor indoor environments in schools increase asthma and other respiratory health events, how does the EPA plan on working with states and local communities before they start re-opening schools, childcare facilities, and offices to ensure that the indoor air quality is safe to breathe, and does not contribute to or exacerbate the current public health crisis?

EPA Response: EPA's Indoor Air Quality (IAQ) Tools for Schools Program is providing information, guidance and technical assistance to our stakeholders who are working to ensure that schools are healthy places to work and learn as they consider how and prepare to re-open. Whether schools are open or closed, indoor air quality is still an important part of maintaining a healthy indoor environment in schools.

EPA is working closely with CDC and other school networks and organizations to develop and distribute information on resources, technical guidance and support materials to help schools respond to the COVID-19 pandemic and to maintain healthy indoor learning environments. EPA has reached out to the more than 60,000 school stakeholders that comprise the Schools IAQ Connector Network on-line community to provide this information. EPA has hosted webinars, including EPA's actions and strategies in the IAQ Tools for Schools (https://www.epa.gov/iaq-schools/indoor-air-quality-tools-schools-action-kit) and IAQ Tools for Schools Preventive Maintenance guidance (https://www.epa.gov/iaq-schools/indoor-air-quality-tools-schools-preventive-maintenance-guidance-documents) and in particular, how actions, strategies and preventive maintenance relate to controlling SARS CoV-2 and other viruses, such as through cleaning, disinfection, ventilation and other operation and maintenance of facilities.

In addition, EPA offers a webpage of FAQs on coronavirus and indoor air, including HVAC guidance and information on ventilation and filtration. Additional coronavirus FAQs address cleaning versus disinfection, as well as concerns about using disinfectants around those with asthma or other chronic respiratory disease. Finally, EPA and CDC jointly developed the "Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools and Homes". All of this guidance is accessible at www.epa.gov/coronavirus.

Senator Booker:

88. The rollbacks of health protections that EPA is pursuing under your leadership are a death sentence for communities around the country that are already suffering from high levels of pollution. And even during this pandemic, as we see African Americans and others who have medical conditions associated with higher levels of air pollution getting sick and dying in higher numbers, you have still continued to push forward with your reckless agenda. One example is your recent proposed rule to not create a stricter air quality standard for particulate matter despite peer reviewed science showing that African Americans have increased risks of premature death from exposure to particulate matter.

    a. Given that EPA is required by Executive Order to consider environmental justice and the impact of its rulemakings on minority communities, please describe what weight you gave to the harm caused by particulate matter on African American communities in your decision to not create a more protective standard?

    EPA Response: On December 18, 2020, EPA published the final action of the review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM) (85 FR 82684, December 18, 2020). Primary standards are set to allow an adequate margin of safety and are requisite to protect the public health and to protect the most sensitive populations.

    Section V.K of the notice of the review of the PM NAAQS details Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. EPA believes that this final action does not have disproportionately high and adverse human health or environmental effects on minority, low-income populations and/or indigenous peoples. As further detailed in section II of the final action, EPA expressly considered the available information regarding health effects among at-risk populations in reaching the decision that the existing standard is requisite.

89. Another recent regulatory action you have taken during this pandemic is EPA's release of a draft risk evaluation for the toxic chemical TCE. TCE is a known carcinogen that has been linked to kidney cancer, leukemia, and birth defects. On April 16th the American Academy of Pediatrics, the American Public Health Association, and other groups wrote to EPA asking for an extension of time to submit comments related to this dangerous chemical. In their request letter the groups stated as "stakeholders on the front line of COVID-19" that "there is

simply not capacity to focus on the draft TCE risk evaluation until the national emergency is over." EPA did not respond to this request, but instead moved forward and closed the public comment period.

a. Yes or no, will you commit to reopening the public comment period for TCE so that the American Academy of Pediatrics, the American Public Health Association, and others can provide you with their input on this dangerous chemical?

EPA Response: EPA believes it is important to continue work to expeditiously finalize the TCE Risk Evaluation so as not to delay any risk management action. Therefore, we do not plan to reopen the public comment period for TCE. During risk management for those conditions of use for which we find unreasonable risk, there will be the opportunity for public comment on any proposed regulations.

90. Congress is in the middle of working through a follow up to the CARES Act, but I anticipate that after its completion we will shift from "disaster response" to "long-term economic recovery." Infrastructure is the smartest way to accomplish this. In fact, this Committee has already passed bipartisan water and transportation legislation that will form the base of anything the Senate considers.

However, the Superfund program has been underfunded in recent years despite the fact that a robust Superfund program would provide both short-term jobs as well as long-term growth by eliminating contaminated sites and the associated health risks and allowing communities to create other productive uses for these sites such as new business districts, commercial buildings, or manufacturing.

a. Do you believe that a federal funding boost to the Superfund program would accelerate the pace of site clean-up and provide an economic boost?

EPA Response: While Congressional appropriations for the Superfund Program have remained essentially constant for 15 years, the Trump Administration has worked to improve the efficiency of the Superfund Program. For example, over the past two years, EPA's Superfund Task Force worked to improve the Agency's implementation of the Superfund Program in order to accelerate cleanups and shorten the path to redevelopment and safe, productive reuse. EPA continues to implement the Task Force improvements and performance measures to track how those changes improve the Superfund Program. The increased number of projects ready to start construction is an indication that implementation of the recommendations is having a tangible benefit.

EPA is also now more focused on completing the Superfund process by deleting sites from the National Priorities List (NPL) once all response actions are complete and all cleanup goals have been achieved. This is a significant milestone in the investment the EPA has made at these sites and in FY 2020, the Agency deleted all or part of 27 sites from the NPL. This marks the third year in

a row that EPA has deleted an historically high number of Superfund sites, sending a clear message that human health and the environment are protected and paving the way for redeveloping these priorities into community assets.

Over the long term, remediated Superfund NPL sites will provide long-term economic benefit as they are returned to communities for reuse. Approximately 600 Superfund NPL sites are currently in reuse, with more than 9,100 businesses operating on former Superfund sites generating over $58.3 billion in sales and providing more than 200,000 jobs.

Annually since 2011, EPA has had new construction projects ready to begin work where funding was not available. This challenge has been an ongoing one for the program since the late 1990s. Additional resources provided in the near term would be used for shovel-ready new and ongoing remedial construction projects. EPA anticipates that, should it become available, funding for these sites would both accelerate and complete construction work while employing thousands of people from environmental remediation companies, including small businesses, across the United States.

Additionally, when several construction projects with significant annual expenditures at federally funded sites are in the construction phase, those construction projects are utilizing a significant proportion of the funds that could otherwise go to begin cleanup at projects at several smaller sites. Therefore, the number of newly funded construction projects at sites can be smaller in any particular year due to the significant cost of the active cleanups. For example, between FY 2017-2019, EPA started a number of construction projects that have long-term, multi-year funded cleanups that require $10-15 million per year of ongoing remedial action site allowance funds.

This Administration has continued to make funding decisions to ensure the most efficient and effective protection of human health and the environment. Despite media reports that characterize this Administration's actions otherwise, this Administration has continued to make funding decisions to ensure the most efficient and effective protection of human health and the environment. EPA used this same process in FY 2019 and 2020 to inform remedial action project funding decisions. This process was set up in 1995, when EPA established the National Risk-Based Priority Panel. The Panel is made up of EPA career officials from Headquarters and all ten EPA Regions. The Panel meets at least on an annual basis to assess upcoming new construction projects using relative risk criteria to rank construction projects. After this annual process to allocate resources, EPA reviews available funding on a continuing basis throughout the fiscal year to prioritize appropriated funds for construction projects related to site specific conditions.

It is also important to recognize that the agency completed the necessary pre-construction work to have 35 different construction projects at 34 sites (one site

had more than one construction project) ready for funding consideration at the end of Fiscal Year 2019. Many of these projects previously received significant funding for remedial or removal actions already implemented at these sites. EPA's website has been updated with a fact sheet for each of the 34 sites to include information about the actions the Agency has taken and quantifying the funding that EPA previously provided at the site. These fact sheets show that to date, EPA has expended over $750 million at the 34 sites that have further projects awaiting funding.

Not only is the Agency working to efficiently and effectively utilize Congressional appropriations for federally funded cleanups, EPA is holding responsible parties accountable to fund or carry out cleanup work. The Superfund Enforcement Program continues to maximize potentially responsible party (PRP) participation at every point in the cleanup process. By holding responsible parties accountable, the EPA helps preserve taxpayer funds for the cleanup of sites with no viable potentially responsible parties.

Through enforcement efforts, during the last three years, this Administration has obtained commitments from PRPs to carry out or fund $3.043 billion in cleanup work. In FY 2019, the Superfund Enforcement Program secured commitments for $570 million in new site cleanup work, $283 million in reimbursement of the EPA's costs, and more than $108 million in oversight billed, totaling $961 million, an increase of over $349 million from FY 2018. These commitments were integral in assisting with cleanup and redevelopment at 160 sites.

As described above, the Agency has renewed its focus on the Superfund Program over the past three years to prioritize both progress and completion of work. Contrary to inaccurate assertions made in press articles, the number of unfunded construction projects actually reflects the number of projects at sites that are advancing towards cleanup because pre-construction activities are complete, the remedy is designed, and the project is ready to begin construction. This directly supports the extensive efforts made during the Trump Administration to revitalize communities and promote economic growth, while ensuring the protection of human health and the environment.

Senator Markey:

91. According to reports, you have decided not to issue a protective drinking water standard for perchlorate, a chemical which has been found to cause neurological damage in utero and in infants and young children. The EPA's own flawed modeling, which underestimates the risk, shows that this decision will result in anticipated IQ losses in children: a level of 56 parts per billion is linked to a two-point average decrease in IQ. This decision not to regulate this chemical goes directly against the recommendation of the American Academy of Pediatrics

and it contravenes a 2018 court order, which requires a final standard for this dangerous chemical.

a. Do you think there is any acceptable level of damage to children's brains from perchlorate?

b. Did Nancy Beck have any input into or review the agency's potential actions with respect to the perchlorate, or the models or studies used to estimate their risk, including the question of whether any IQ-point loss is acceptable? If yes, please provide the dates and details of her involvement.

c. Did you or any others at EPA discuss or receive input on the perchlorate decision from or on behalf of the Department of Defense (DOD), DOD contractors, or other industry representatives? If yes, who was the contact with, and what was the substance of the input?

EPA Response: On July 21, 2020, EPA published a final action regarding the regulation of perchlorate under the Safe Drinking Water Act (SDWA). A detailed explanation of EPA's final action is available in the *Federal Register* notice at https://www.govinfo.gov/content/pkg/FR-2020-07-21/pdf/2020-13462.pdf.of the 54 conditions of use evaluated. EPA's evaluation accounts for a number of human health impacts from TCE's conditions of use, including fetal heart malformations. Upon the publication of the Notice of Availability of the risk evaluation, EPA will move to risk management action as required by TSCA. TSCA requires EPA to follow science standards and base decisions on the best available science and the final risk evaluation meets these important requirements. EPA has received the peer review report from the Scientific Advisory Committee on Chemicals panel of independent experts, and this was taken into consideration in the final risk evaluation for TCE.

d. Did Nancy Beck review the TCE draft risk evaluation during the interagency review process? If yes, did she have any input on how the EPA decided to ignore fetal heart malformation as a key parameter for limiting TCE?

EPA Response: Interagency coordination is a mandatory step of the risk evaluation process (see 40 CFR 702.39). For this risk evaluation, as well as all others, EPA followed its normal interagency review process to receive input from its federal partners. In many cases, the Agency revises its draft documents based on this feedback. After reviewing the best available science, EPA selected a different health effect, immunosuppression, as the basis for determining unreasonable risk for the draft evaluation. Fetal cardiac malformations were not ignored in the draft Risk Evaluation, rather a different health endpoint was chosen as the best overall endpoint; however, the fetal cardiac health effects did inform the draft risk characterizations.

92. Some of your emails showed how you tried to discredit the work of National Climate Assessment researchers, including by amplifying a campaign to politicize and undermine the report's findings about the dangers of climate change.

    a. Do you agree that our global change research should include an assessment of high-end climate scenarios, so we know how to plan for and work to avoid the worst effects of climate change?

    EPA Response: In collaboration with other federal agencies of the U.S. Global Change Research Program, EPA continues to evaluate scientifically rigorous scenarios and data products for future assessment reports, including the Fifth National Climate Assessment. The IPCC is in the process of adding several mid-range emission scenarios between the lower RCP4.5 and the higher RCP8.5 to their suite of modeling scenarios. EPA continues to believe that, in order to inform sound policy decisions, evaluating climate change risks under a range of modeling scenarios is appropriate.

    b. Can you commit to not interfering with or politicizing our federal global change research in any way?

    EPA Response: EPA will always support robust and transparent scientific processes to inform our policy decisions and will continue to lend the expertise of Agency scientists to major global change assessment processes.